

LEGAL CONSTRAINTS

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I. Introduction

Defining pertinent legal parameters is an essential factor in establishing a solid basis on which the Fairbanks North Star Borough Trail Program can be built. Since the initiation of efforts by the Borough to develop a trail program, several legal issues have continually been brought forward in public meetings concerning trails. These issues, which include liability and controlling unauthorized trail use, must be researched and the existing laws clearly defined in order for the public, Borough, and other agencies to better understand and deal with these problems. In addition, legal matters such as Borough management authorities concerning trail rights-of-way and requirements for properly documenting trail corridors must be clarified in order for the Borough or trail user groups to understand the requirements for dedicating trails and how they can be managed once they are legally reserved.

The following paper reviews the principal legal issues which pertain to the establishment of a Borough trail network. Recommendations on how the Borough can best deal with specific issues will be included in the final Comprehensive Trail Plan document. Appendix A contains legal citations for the readers' reference. Appendix B is a glossary of legal terms.

II. Review of Legal Constraints

The following review of the major legal constraints pertaining to recreational trails is grouped into five principal categories. These categories include:

(1) management authorities concerning trail rights-of-way; (2) authorities to ensure proper trail usage; (3) right-of-way acquisition authorities; (4) requirements for legal documentation of trail rights-of-way and, (5) liability related to trail rights-of-way. In some instances the laws dealing with these issues will pertain to more than one category.

A. Management Authorities Concerning Trail Rights-of-way

Existing legal reservations of recreational trails can be divided into two basic categories consisting of: (1) rights-of-way or lands dedicated

specifically for recreation; and, (2) trails which are located within road or highway rights-of-way. Recreational trails which are established within state or federal recreation areas are within the management authority of the particular agency having jurisdiction over the land. These trails are not the management responsibility of the Fairbanks North Star Borough (FNSB), although they are important to consider when reviewing the availability of dedicated recreational trails to Borough residents.

1. Dedicated Trail rights-of-way

Dedicated trail rights-of-way include trails reserved by easements in less than fee simple title and trails which are dedicated to the public in full fee simple estate. Alaska Statute Sec: 29.48.030 (see Appendix A) provides that municipalities may exercise the powers to provide public recreation facilities. The FNSB has assumed the authority to regulate and manage recreational facilities which includes recreational trail rights-of-way. In addition, Alaska Statute Sec. 29.48.035 states that "a municipality may regulate the operation and use of its public rights-of-way, public facilities and services." It should be noted that easements which are not dedicated for public use are not considered public rights-of-way and, thus, do not fall within the regulatory authority of the FNSB.

Parks or trails which are dedicated to the public in fee simple title, and which have been accepted by the Borough are within the management authority of the FNSB as recreational facilities. When trails or parks are dedicated with restrictions to specific uses, FNSB management options are also subject to these same restrictions.

2. Trails Within Road or Highway Rights-of-way

As shown in the above section, the FNSB has the authority to regulate the operation and use of its public rights-of-way under Alaska Statute 29.48.035. Up to this time, the Borough has not

exercised this authority to any large extent. The major area where the Borough does exercise authority over road rights-of-way is within road service areas through the service area commissions. Road rights-of-way which are identified components of the state highway system are managed almost exclusively by the Alaska Department of Transportation and Public Facilities (ADOT/PF). Rights-of-way which have been tentatively identified under the terms of R.S. 2477 are also mainly regulated by ADOT/PF.

a. Trails Within State Highway System Rights-of-way

When trails are established within state highway system rights-of-way, a letter of non-objection or a permit to encroach into the right-of-way must be obtained from ADOT/PF through Alaska Statute 19.25.200. Normally, authorizations received from ADOT/PF for trail use of highway rights-of-way are granted subject to future highway relocation or expansion. An example of this is the authorization received by the FNSB from ADOT/PF prior to realigning a portion of the Skarland Ski Trail into the Ballaine Road right-of-way.

Alaska Statutes Section 41.21.866 states that "The commissioner of transportation and public facilities shall administer the plan and program providing for the establishment and maintenance of footpaths, bridle paths, bicycle paths, ski trails, dog sled trails, motorized vehicle trails and other paths and trails along certain designated existing highways, or when a highway, road or street is being constructed, reconstructed or relocated after June 7, 1972."

This statute also provides for the commissioner of The Department of Transportation and Public Facilities to establish a uniform system of marking paths and trails along highways. Although this law is mainly oriented toward trails established under the Alaska Trails and Footpaths Grant Program, it clarifies the authorities of the commissioner of ADOT/PF in regard to trails within highway rights-of-way. Up to the

present time, ADOT/PF has not actively implemented this authority except with the provision of bicycle paths. The FNSB can work more closely with ADOT/PF to utilize this authority. An example of how this can work is the Borough's recent efforts to work with ADOT/PF to include a trail within the road right-of-way for the proposed "Isberg Road" between Chena Ridge and the Cripple Creek Road.

The Alaska Administrative Code also provides the state the authority to control use of snowmobiles and other off-highway vehicles within highway rights-of-way. This subject will be covered under "Authorities to Ensure Proper Trail Use."

b. Trails Within Road Rights-of-way Outside the State Highway System

Management authorities of both the FNSB and ADOT/PF concerning road rights-of-way outside the designated state highway system are not regularly exercised. Alaska Statutes Sec. 19.05.030 states that one of the duties of ADOT/PF is to "direct approved highway planning and construction and maintenance, protection and control of highways;". Alaska Statutes 19.45.001 (8) states that "highway" includes a highway (whether included in primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure or other similar or related structure or facility, and right-of-way thereof....." These two laws provide the Department of Transportation and Public Facilities the authority to protect and control rights-of-way outside the designated state highway system, even if that authority is not presently utilized. In addition, the above legal definition of a highway within the State of Alaska indicates that a "highway" can range from a multi-lane asphalt freeway to a pedestrian walkway.

The Fairbanks North Star Borough has authority to regulate use of its public rights-of-way through Alaska Statute 29.48.035 as previously stated. The FNSB presently exercises limited

control over public road rights-of-way by controlling direct access to roads when new lots are created through the subdivision process. The Borough Code of Ordinances, Chapter 12, provides for protection of public roads and areas. Section 12.01.010 of this chapter states:

" It is the purpose of this chapter to provide for the protection of public roads and areas of the borough as provided herein. Nothing in this chapter shall be construed to prohibit objects or activities which do not impair the proper public use of a public road or public area."

Through the previously outlined authorities, both the Borough and ADOT/PF have some responsibilities pertaining to road rights-of-way outside the designated state highway system. None of these authorities prohibit the use of road rights-of-way for recreational trails. As long as trail activities do not impair public use of a right-of-way, they are considered legal and proper uses of highway rights-of-way.

An example of how trails can be a legal use of road rights-of-way was demonstrated when the residents of Chena Marina Subdivision initiated action to establish a service area. At that time concern was expressed about the legal status of dog sled trails within the road rights-of-way. These were not within the state maintained road system; and, thus, did not require an encroachment permit from ADOT/PF. The dog sled trails are a legal public use of a public right-of-way and can be continued whether the service area is formed or not. Once the service area is formed, it is up to the individuals in the service area to ensure that the dog sled trails do not impair public use of the roads and that plowing the road does not interfere with public use of the sleddog trails.

As previously noted, the Alaska Administrative Code provides special rules for the operation of snow machines and other

off-highway vehicles within highway rights-of-way. These laws will be covered more thoroughly under "Authorities to Ensure Proper Trail Use."

c. R.S. 2477 Rights-of-way

R.S. 2477 rights-of-way include rights-of-way established by public use over unreserved public lands and federal section line easements. Revised Statute 2477 is a federal law which is codified as 43 USCA § 932 and was repealed in 1976 by the Federal Land Policy and Management Act. Since this law was repealed no new rights-of-way can be established under this authority, however, previously existing valid rights-of-way are not affected. R.S. 2477 rights-of-way were established for highway purposes and their application to the protection of recreational trails is uncertain. The entire original statute is written as follows:

§ 932. Right-of-way for highways

The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted. R.S. § 2477.

Many trails within the Fairbanks North Star Borough and the entire state of Alaska were established by public use over, what was at that time, unreserved federal public lands. The Alaska Department of Transportation and Public Facilities maintains a listing of "the existing trails system" which are routes considered by the Department to have R.S. 2477 status. Since the time these rights-of-way were established across federal lands, much of the land crossed by these trails has been transferred into state, borough, and private ownership. Often times, R.S. 2477 rights-of-way are not clearly identified in public land records and have not been noted on deeds of land transferred out of federal ownership. In these cases, the rights-of-way may be only identified on the deed as "subject to

other valid existing rights-of-way". To add to the confusion, there have been disagreements between the state and federal government concerning the criteria necessary for a trail to qualify as an R.S. 2477 and which trails in the state have this status. Many of these questions may ultimately have to be resolved in the courts. When conflicts arise over the use of R.S. 2477 rights-of-way, the present policy of ADOT/PF is "to review any change of status of valid prior existing rights on a case by case basis."

The existence, management and use of R.S. 2477 rights-of-way is an important issue in regard to the Borough Trail Program. Out of 91 trails and trail systems included in the Comprehensive Trail Plan draft "Jurisdictional Responsibilities and Trail Inventory" paper, 35 have at least some portion identified as R.S. 2477's by ADOT/PF. Several of these trails, including the Circle-Fairbanks Trail and Chena Hot Springs Winter Trail, have been identified as high priority recreational trails by the Trails Advisory Commission. A major problem in dealing with these rights-of-way is the lack of a consistent and well defined policy within the state for management and protection of the rights-of-way.

In September 1981 the State of Alaska, Attorney General's Office issued an informal opinion on the management of R.S. 2477 rights-of-way. This Attorney General's Opinion states that:

"the Alaska Department of Transportation and Public Facilities has management authority over R.S. 2477 highways where they occur on non-state land. Where such highways occur on state land, the Alaska Department of Transportation and the state agency having management authority over the state land in question have concurrent authority over the highway."

This A-G opinion goes on to state that:

"So long as the right-of-way has been validly established by public use and is thereby acknowledged to exist, it remains free for public use, though the means of conveyance of the public over that right-of-way is subject to reasonable regulation to achieve other public purposes, such as minimization of terrain damage, avoidance of wildlife harassment, and other reasonable restrictions to achieve such goals."

A second Attorney General's Opinion was issued in February, 1983 pertaining to the Circle-Fairbanks Trail, its status as an R.S. 2477, and whether the trail could be restricted to recreational use. This A-G Opinion states:

"a highway created by public user under the provisions of R.S. 2477 cannot be narrowly restricted to a particular type of public travel (i.e., recreational use; note added) except in those situations where road closure to certain vehicular use is necessary to protect road surfaces during certain seasons of the year."

Although some portions of these two A-G opinions may contradict each other, both opinions indicate that state management authority of R.S. 2477 rights-of-way is similar to other public highway rights-of-way authorities.

In summary, the state does have management authority over R.S. 2477 rights-of-way which are proven to be valid existing rights. This authority allows the state to protect these rights-of-ways from encroachment, regulate use of the rights-of-way and utilize portions of the rights-of-way for recreational trails similar to other state highway rights-of-way. Attorney General's Opinions indicate that

reasonable restrictions can be made on the rights-of-way as long as they remain free for public use. In addition, as public rights-of-way within the Borough, the FNSB can regulate R.S. 2477's through powers granted under Alaska Statute 29.48.035.

B. Authorities to Ensure Proper Trail Use

Although the Fairbanks North Star Borough and other agencies have the legal authority to manage trail rights-of-way, unauthorized uses of trail corridors can be very difficult to prevent on a practical, on the ground basis. There are many different perceptions among trail users and property owners about what types of trail uses are appropriate and compatible. Concerns have most often centered around prevention of motorized trail use on trails designated for non-motorized activities only. Fear of uncontrolled use of non-motorized trail easements by snowmachines and dirt bikes can make property owners reluctant to establish trail easements. The following section of this report defines what uses of trail or highway rights-of-way are legal and what laws presently exist to help ensure proper trail use.

1. Legal Uses of Trail Dedications and Existing Enforcement Authorities

Rights-of-way which are dedicated for recreational trail use can be used only for the purposes allowed on the recording instrument which establishes the dedication. Easements which are identified only by the phrase "trail easement" are available for general trail use. A possible exception to this rule could be found if the FNSB adopted a particular regulation for use of the easement through public right-of-way regulation authority. Easements or land dedicated on their recording instrument for a specific trail use such as "non-motorized recreational trail easement" can be used only for the use specified. Borough right-of-way regulation authority is also limited by restrictions on the recording instrument. In the same

manner, easements which are established for utility purposes cannot legally be used for trail corridors unless the use is specifically provided for on the recording instrument.

Use of any easement for purposes other than what the easement is specifically established for is considered unlawful. As such, this use can be prosecuted as criminal trespass in the second degree under Alaska Statute Section 11.46.340 (see Appendix A). If any damage is caused by illegal use of easements, it may constitute criminal mischief and persons can be held criminally liable.

Additionally, the Alaska Administrative Code provides "No snowmobile or other off-highway vehicle may cross or travel on a sidewalk, a location intended for pedestrian or other non-motorized traffic, an alley, or a vehicular way or area which is not open to snowmobile or off-highway vehicle operations...." (13 AAC 02.455(g)). This law also establishes provisions for direct crossings of highways and non-motorized areas by snowmobiles or off-highway vehicles.

Although the Fairbanks North Star Borough has not acted to assume the authority, Alaska Statute Section 29.48.035 allows municipalities to regulate "vehicle, pedestrian and other traffic, and licensing and operation of motor vehicles, including snow vehicles and off-highway vehicles, and operators..." as long as these regulations do not conflict with state laws. Alaska Statute Section 05.30.070 also allows the regulation, by ordinance, of the use and operation of snow vehicles within political subdivisions of the state. There has been no need shown to implement these authorities at the present time, however, they are available if severe problems develop in the future.

Chapter 9.12 of the Fairbanks North Star Borough Code of Ordinances defines offenses against public property and provides a penalty for violations. Section 9.12.010A states:

"No person may enter upon, occupy or use any borough park or recreation facility except in accordance with borough parks and recreation rules and regulations."

This section also prohibits damage or littering of park or recreation property.

Through the above state and borough laws, the FNSB has the authority necessary to control use of dedicated and accepted trails whether they are reserved by easements or fee simple estate.

2. Legal Use of Trails Within Highway Rights-of-way

Trail use of highway rights-of-way can be a legal and legitimate use of a public right-of-way. Under Alaska Statute 41.21.866, the Commissioner of the Department of Transportation and Public Facilities has the authority to provide for establishing and maintaining both motorized and non-motorized trails along highways or roads. If trails are established by an approved plan submitted by the Department of Transportation and Public Facilities, the trails can be used for types of uses written into the plan.

The Alaska Administrative Code section on Public Safety (13AAC) provides detailed stipulations for use of bicycles, nonmotorized conveyances, motorcycles, snowmobiles and off-highway vehicles on highways (see Appendix A). The Alaska State Troopers have summarized laws pertaining to snowmachine and off-road vehicles in a short brochure entitled "Alaska Law ATVS" (see figure 1). The Alaska Administrative Code does allow use of snowmachines and off-highway vehicles when "driven on the right-of-way of a highway which is not a controlled access highway, outside the roadway or shoulder, and no closer than three feet from the nearest edge of the roadway; night driving may only be on the right-hand side of the highway and in the same direction as the highway motor vehicle traffic in the nearest lane of the roadway...." (13 AAC 02.455(a)(4)). This law also includes stipulations for safe bridge and culvert crossings, special authorizations for use of highways and allowable methods of crossing highways by snowmachines and off-highway vehicles. Alaska Statute Section 05.90.001 allows for racing events of snow vehicles or motorcycles on highways if

For more information contact your
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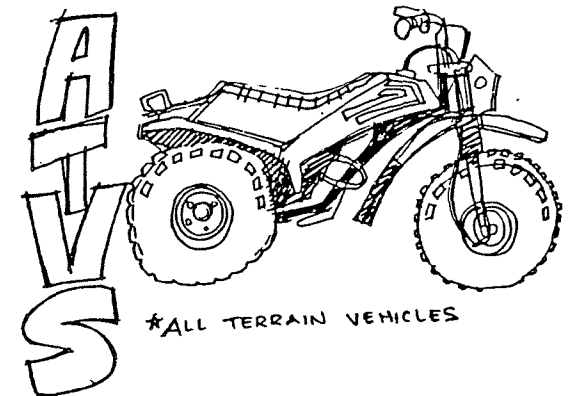
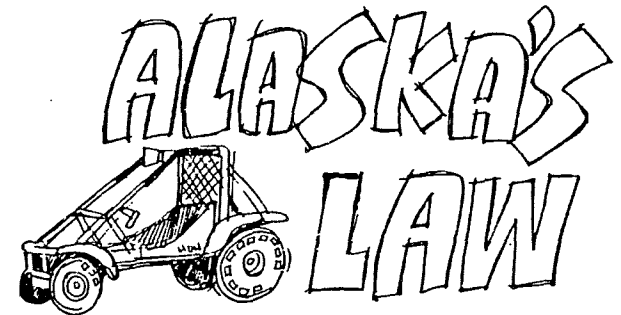
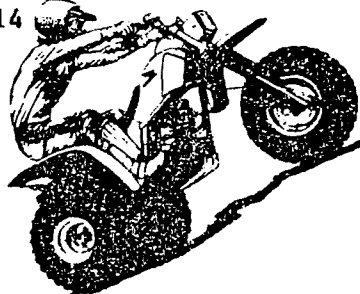
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WESTERN ALASKA

Alaska State Troopers
Box 268
Bethel, AK 99559
543-2294

INTERIOR ALASKA

Alaska State Troopers
1979 Peger Road
Fairbanks, AK 99701
452-2114



13 AAC 02.455. OPERATION ON
HIGHWAYS AND OTHER LOCATIONS. (a) A
snowmobile or an off-highway vehicle may be
driven on a roadway or shoulder of a highway
only under the following circumstances:

(1) when crossing a highway as provided in
(f) of this section, or when traversing a bridge or
culvert on a highway, but then only by driving
at the extreme right-hand edge of the bridge or
culvert and only when the traverse can be
completed with safety and without interfering
with other traffic on the highway;

(2) when use of the highway by other motor
vehicles is impossible because of snow or ice
accumulation or other natural conditions or
when the highway is posted or otherwise
designated as being open to travel by
off-highway vehicles;

(3) when highway driving is authorized by an
authority having jurisdiction over the highway,
but only in accordance with restrictions which
may be imposed by that authority with regard
to highway use; or

(4) when driven on the right-of-way of a
highway which is not a controlled-access
highway, outside the roadway or shoulder, and
no closer than three feet from the nearest edge
of the roadway; night driving may be only on
the right-hand side of the highway and in the
same direction as the highway motor vehicle
traffic in the nearest lane of the roadway; no
person may drive an off-highway vehicle within
the area dividing the roadways of a divided
highway, except to cross the highway as
provided in (f) of this section.

(f) A snowmobile or an off-highway vehicle
may make a direct crossing of a highway if

(1) the crossing is made approximately at a
right angle to the highway and at a location
where visibility along the highway in both
directions is clear for a sufficient distance to
assure safety, and the crossing can be completed
safely and without interfering with other traffic
on the highway; and

(2) the vehicle is brought to a complete stop
before crossing the shoulder or roadway, and the
driver yields the right-of-way to all traffic on the
highway.

(g) No snowmobile or other off-highway
vehicle may cross or travel on a sidewalk, a
location intended for pedestrian or other
nonmotorized traffic, an alley, or a vehicular
way or area which is not open to snowmobile or
off-highway vehicle operation, except as
provided in (f) of this section. (Eff. 12/31/69,
Reg. 31; am 7/23/70, Reg. 35; am 6/28/79, Reg.
70)

Authority: AS 28.05.011

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Alaska State Troopers

OFF ROADWAY FUN

Many Alaskan's enjoy riding 3-Wheel & 4-Wheel ATV's (All Terrain Vehicles) because they allow access to many remote areas all year long. Over mountains, trails, through swamps & tundra, across streams, and in hard packed snow, these Off Highway vehicles excel.

They come in different models, makes, colors, engine sizes and, of course, the manufacturers promise that this is the best work and recreational vehicle available.

There is also the instruction that the vehicle is for OFF-ROAD USE ONLY.

REGISTRATION

Alaska statute 28.10.011 requires that all motor vehicles driven "upon a highway or other public parking place" shall be registered. However, ATV's do not comply with Federal Department of Transportation standards for tires and rims. No ATV on the market today meets federal emission standards since no manufacturer has applied for such.

Therefore, they are deemed unsafe for road use and cannot be registered as motor vehicles.

SNOW VEHICLES

A vehicle with low pressure tires, (3-wheel & 4-wheel ATV's) may qualify as a snow vehicle. Such vehicles are required to be registered the same as snowmobiles (AS.05.30.120). This statute will permit you to have your ATV registered to prevent theft but does not mean it is licensed. Under Alaska Statute 05.30.010, a person may not operate a snow vehicle off his private property unless the snow vehicle has been registered with the Department of Public Safety.

AS.05.30.020 (Alaska Statute) provides for a 2 year registration fee of \$5.00 and AS.05.30.040 refers to permanent numbered decals provide with the registration.

Required equipment is outlined in AS.05.30.080 and refers to brakes, head lamps, throttle, and exhaust muffler.

RESPONSIBILITY

Alaska Statutes 05.30.100-120 are general provisions for snow vehicles which direct procedures for accident reporting, penalty and the definition of snow vehicles.

Section 05.90.001 also gives guidelines for operating snow vehicles on state highways for special racing events.

Under the Administrative Code, Parents can be cited for allowing their children to violate any of the snow vehicle and off highway vehicle sections.

Just remember, reckless driving on off roadway vehicles is an arrestable offence. You could be charged with trespassing if you ride on private property without permission. Any damages you cause constitute criminal mischief and you are held criminally liable. Loud mufflers in residential areas bring complaints of disorderly conduct.

IMPOUND

Under 13AAC02.345(b)(2), A Police Officer may impound & remove to a place of safety a vehicle which is found or operated on a highway without license plates or registration.

Parent/Guardians, AS.34.50.020 places liability upon you for civil damages & court costs up to \$2,000 resulting from wilful or malicious damage to real or personal property by minors under your legal custody.

Off highway vehicles are good working and recreational outlets for all Alaskans. Just operate them in a reasonable and safe manner, obey the State laws pertaining to them, and be courteous toward others.

consistent with federal law and a permit is concurred upon by the Commissioner of the Department of Transportation and Public Facilities.

Alaska Statute Section 05.30.010 requires all snow vehicles (which may include 3 and 4 wheel all-terrain vehicles) which are operated off of private property to be registered. Unregistered snow vehicles can be impounded by State Troopers under 13 AAC 02.345.

3. Encroachment Upon Trail Rights-of-way

The FNSB Code of Ordinances Title 12 provides for protection of public roads and areas. Section 12.01.020 prohibits encroachments and section 12.01.030 provides for removal of encroachments in, on, under or over a public road or area dedicated to public use. The definitions provided for public areas and roads include parks, greenbelts, recreational areas, highways, roads, walks and trails. Alaska Statutes Section 19.25.210 provides for removal of encroachments from state highway rights-of-way.

C. Right-of-Way Acquisition Authorities

As indicated in the draft "Jurisdictional Responsibilities and Trail Inventory" paper, the majority of the existing trail network within the Fairbanks North Star Borough has no clearly defined legal rights-of-way. This portion of the report outlines presently existing mechanisms and authorities to acquire recreational trail rights-of-way..

1. Existing Fairbanks North Star Borough Recreational Trail Right-of-way Acquisition Authority

a. Limitations

The Fairbanks North Star Borough Assembly established policy for recreational trail acquisition with Resolution No. 80-9 in

February 1980 (see appendix A). This policy is primarily orientated toward trail easement acquisition on private lands and has a strong emphasis toward working cooperatively with land developers. The policy does not provide any special authority to acquire trail easements, but rather, defines limitations and guidelines on how the acquisition process should work.

Section 1.d. of this policy states: "Eminent Domain powers shall not be utilized for the acquisition of recreational trail easements." The policy allows for acquisition of easement rights by a variety of methods including public dedication, easements by purchase or donation, right-of-way permits or by cooperative agreements. Easements can be granted for certain uses or seasons for particular trail requirements. The policy states that at the time of initial easement acquisition "trail alignment shall be adjusted.....to coincide with property boundaries.....in order to maintain property use and development rights with the provision that the trail's utility is maintained."

Section 2.e. of the policy provides a mechanism for priorities for easement acquisition to be set each year by the Planning Commission and Assembly, however, this process has not been instituted up to this time. Section 2.e provides that considerations in establishing priorities for easement acquisition should include "intensity of public use on the trail, multiplicity of use on the trail, utility of the trail for point to point access, and land tenure."

Section 4.b. of the policy states that all subdivisions brought before the Planning Commission (now delegated to the Platting Board) "shall be assessed for trail system needs. Voluntary easements will be encouraged for the public good, but failure to grant such easements shall not prejudice the developers' right for approval."

b. Easement Acquisition Authority

The Borough subdivision ordinance section 17.20.010 establishes subdivision design requirements and provides that consideration shall be given to the allocation of suitable areas for parks and other areas to be dedicated for public use. The ordinance also provides for dedication of easements along streams for protecting the stream or for sanitary or recreational uses. Part EE. of section 17.20.010 provides that when easements are established for multiple uses, one intended use of the easement must not inhibit or prevent the other intended use of the easement. The ordinance emphasizes this with regard to co-use utility easements.

Through FNSB Title 17, the Borough Platting Board could require a trail easement in a new subdivision if it was demonstrated that such a reservation was a necessary "public space". On private lands not being subdivided, trail rights-of-way can be acquired from willing landowners. Where landowners are not willing to negotiate trail easements, trails must be realigned to locations where legal rights-of-way can be acquired or the trail must eventually be abandoned for public use.

2. Acquiring Rights-of-way on public lands.

Both the Fairbanks North Star Borough and the State of Alaska have defined procedures for establishing rights-of-way on lands to be retained in public ownership and lands being prepared for disposal. In addition, the Bureau of Land Management regulates the permitting of rights-of-way across federal lands.

a. Fairbanks North Star Borough

Recreational trail use can occur on Borough lands as a casual use requiring no written authorization, a temporary use requiring a written permit or can require an easement or lease.

Title 16 of the FNSB Code of Ordinances defines the different levels of use of Borough lands and the process used to establish easements. Section 16.01.020 provides that "The borough shall identify and retain ownership to those lands required for public uses in the future." In order for Borough property to be dedicated for public recreation it must be approved by a resolution of the Assembly. This was the mechanism used to dedicate land at Two Rivers and Salcha for cross-country ski trail networks.

Dedication of an easement across Borough lands also requires a resolution of the Borough Assembly (FNSB 16.18.010). Requests for dedication of Borough lands by easements or fee simple title are handled by the Division of Land Management. The Division of Land Management is also responsible for establishing dedications for public purposes in Borough land disposals. These reservations are approved by the Borough Assembly in conjunction with approval of the disposal.

The FNSB Code of Ordinances (16.05.060) authorizes the Borough Assembly to exchange land or interests in land when such an exchange would be advantageous to the Borough or when it is in the public interest to do so.

b. State of Alaska

Alaska Statute Sec. 38.05.330 provides the director of the Division of Land and Water Management the authority to issue permits, rights-of-way or easements on state land for trails. The Department of Natural Resources Policy and Procedures Manual chapter 5122, section 02, item 3.10 indicates that state action may create public easements on state land in response to an application filed under A.S. 38.05.330 or during the platting process prior to land conveyance. Individuals, organizations or public agencies may apply for easements on state lands at the Division of Land and Water Management. The general public and agencies are also provided the opportunity

to comment on trail or other reservations needed in state land disposals.

Through A.S. 38.05.315 state land can be conveyed to political subdivisions of the state or non-profit corporations, associations or clubs for public and charitable purposes. State land could be conveyed to the Borough for trail recreation purposes through this authority. The Borough would be required to maintain and operate land acquired under this authority in a manner consistent with the original application purpose.

c. federal government - Bureau of Land Management

The Federal Land Policy and Management Act of 1976 (P.L. 94-579) Section 501 provides the Bureau of Land Management the power to authorize rights-of-way. Rules for applying for these rights-of-way are found in Title 43, part 2800 of the Code of Federal Regulations. Right-of-way applications can be made by agencies or individuals under this authority at the Bureau of Land Management (BLM) office on Ft. Wainwright. The FNSB presently has an application pending at BLM for a right-of-way for a portion of the Skyline Ridge Trail.

The Fairbanks North Star Borough is eligible to obtain recreational land from the BLM through the Recreation and Public Purposes Act (RPP) of 1954. Regulations for obtaining land through this authority are found in Title 43 of the Code of Federal Regulations, parts 2740 and 2912. This act authorizes the Secretary of the Interior to either lease or sell lands. Organizations who desire to purchase lands must first accept a lease to assure proper development of the land prior to issuance of a patent. Applications for land through RPP requires preparation of development and management plans and lands may be subject to certain terms or conditions. The FNSB School District's Heritage Park outdoor education site is being acquired from BLM through the Recreation and Public Purposes Act.

D. Requirements for Legal Documentation of Trail Rights-of-way

The Fairbanks North Star Borough Policy on Recreation Trails (Resolution No. 80-9) contains several requirements for documentation of trail rights-of-way. Section 3 C. of this policy states that: "All perpetual rights acquired shall be recorded." Filing a recording instrument with the Fairbanks District Recorders Office is the basic procedure for documenting a public right-of-way. Rights-of-way can be recorded with a survey and plat or by reservations placed on the deeds or title to property. Rights-of-way can be established by signed agreements between two parties without being recorded, however, this provides no protection against a third party later acquiring interest in the land in conflict with the previous easement or right-of-way.

The FNSB policy on recreation trails establishes more detailed requirements for trails included in the Comprehensive Trail Plan which the Borough can guarantee legal public access to (it should be noted that a Comprehensive Trail Plan has never been written which was consistent with the requirements of this policy). Within this policy, trails which can be guaranteed for public access require "legal public access reserved by means of an easement, on-site survey and recorded plat". The policy goes on to state that "Trails located along property boundaries, section lines and utility easements, shall be deemed surveyed so long as a plat can be prepared and the easement retraced on the ground."

While a survey and plat are desirable in order to clearly identify an easement, they are not always legally necessary. If a new survey and plat is not prepared for a trail right-of-way, the location of the trail should be documented with a legal description which is tied to existing monumentation (such as a back lot line) on the recording instrument. A trail easement agreement form has been prepared by the Borough Attorney's Office and the Division of Engineering for use in documenting trail easements acquired for the Jeff Studdert Sleddog Trails (see figure 2). This form provides

TRAIL EASEMENT

THIS AGREEMENT, made this 21st day of April, 1982, between
Nellie and Clyde Sherman, their heirs, executors,
administrators, agents, successors and assigns, herein after referred to
as "Grantor(s)", and FAIRBANKS NORTH STAR BOROUGH, a municipal
corporation duly organized and existing under the laws of the State of
Alaska, herein after referred to as the "Borough",

WITNESSETH:

1) Grantor(s) hereby grant and dedicate to public use in
perpetuity an easement for sled dog racing trails from November 15 thru
March 31 of each year for the Jeff Studdert Trail System over and across
property owned by them, such easement to be described as follows:

The West 100.00' and the South 100.00' of the
Southeast quarter of Section 27, T.1N., R.1W.
F.M., Alaska.

2) Grantor(s) agree(s) to permit the Alaska Dog Mushers
Association, Inc., by and through its officers, agents, and employees,
to go over and upon the described land in order to perform any and all
acts necessary to maintain or repair the trail there on and properly
carry into effect the purposes for which the easement is made.

IN WITNESS WHEREOF, Grantor(s) has/have set her hand(s) and seals(s), or has/have caused these presents to be executed by _____ duly authorized representative or agent, all as of the 21st day of April, 1982.

Clyde Sherman
(Grantor)

William Sherman
(Grantor)

STATE OF ALASKA)
FOURTH JUDICIAL DISTRICT) ss

THIS IS TO CERTIFY, that on the 21st day of April, 1982. before me, the undersigned, Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared before me Clyde Sherman + as atty-in-fact for William Sherman known to me to be the individual(s) mentioned in and who executed the foregoing instrument, and acknowledged to me that he signed and sealed the same as his voluntary act and deed for the uses and purposes therein mentioned.

WITNESS MY HAND and official seal the day and year in this certificate first above written.

Mary A. Allen
Notary Public in and for the State
of Alaska. My commission expires:
2-16-83

(SEAL)

an example of the basic format which can be used to document trail easements. The form can be adjusted to meet the particular requirements of specific trails. These agreements should be recorded once signed to prevent future misunderstandings or confusion over the presence of the easement. Prior to the execution of any such agreement, the specific document should be submitted to the Borough Attorney's Office and Division of Land Management for review.

Rights-of-way established on lands managed by the Alaska Department of Natural Resources are generally required to be centerline surveyed (DNR Policy and Procedure Manual Chapter 5122, Section 02, part 4.1 H). This requirement can be waived if there are other methods of describing the location of the easement, such as existing property lines or if there is little likelihood of conflicts with existing or proposed land uses in the area.

The Borough Policy on Recreation Trails Section 2a provides that easement rights can be acquired in the form of right-of-way permits or cooperative agreements. These types of arrangements do not always provide guaranteed perpetual public access rights but they can be useful in publicly documenting the existence and importance of a trail. The Borough presently has cooperative agreements with the University of Alaska and Department of Natural Resources covering parts of the Skarland Ski Trail Network and Jeff Studdert Sleddog Trails, respectively. These agreements are subject to termination by either party with sixty to ninety days notice and as such, do not provide permanent trail protection. Despite lack of absolute legal reservation, public agencies are not likely to close down heavily used and supported trail networks such as these.

In a similar manner, letters of non-objection and right-of-way permits are valuable for documenting the existence of a trail but do not always provide permanent legal protection. Many times letters or permits such as these are granted subject to future highway relocation or construction and may be extinguished at some future time in the future. On a practical basis, these types

of permits can be adequate documentation of trails in specific situations.

E. Liability Related to Trail Rights-of-way

Liability relating to trail rights-of-way was briefly researched and addressed in the "Task 1 - Background Information" paper prepared at the beginning of the Comprehensive Trail Plan project. This review which was included under "Principal Property Owner Concerns" dealt mainly with liability potential of private property owners with trail easements on their land. Other liability issues related to the Borough Trail Program include: 1) possible FNSB liability related to trail rights-of-way, 2) possible liability relating to co-use easements (such as trail and utility easements) and, 3) possible liability of organizations which accept responsibility for trail maintenance.

Alaska Statute Section 09.45.795 states that "An owner of unimproved land is not liable in tort for damages for the injury to or death of a person who enters onto or remains on the unimproved portion of land if:

- (1) the injury or death resulted from a natural condition of the unimproved portion of the property; and
- (2) the person had no responsibility to compensate the owner for his use or occupancy of the property."

This statute does not distinguish particular private or public landowners and thus applies to the Fairbanks North Star Borough as a landowner as well as individual property owners.

In September 1983, the Borough Attorney's Office prepared a memorandum which addressed the question "What level of care is necessary to avoid or minimize liability on the part of the Borough for negligent or inadequate maintenance of the trails?"

(see appendix A). This memorandum indicated that "the Borough's duty is only to exercise ordinary care to keep the trails reasonably safe for persons using them in the exercise of ordinary care themselves." This memorandum states that when trails are established or held forth for public use under the Borough's color of authority "the Borough will have the affirmative duty to inspect and maintain these trails to prevent injury to users from normally occurring hazards." This does not imply that the Borough assumes responsibility for all trail rights-of-way. It indicates that a higher level of care should be ensured by the Borough for those trails which are identified as public recreational facilities. Thus, if the Borough were to identify a particular trail for public use by a map, brochure, sign or other means, precaution should be taken to ensure the trail is in a reasonably safe condition for the type of use for which it is intended. This is the same type of care which should be exercised for all parks and recreation facilities.

Although concern has repeatedly been expressed about liability potential to private landowners on trail easements or utility companies on easements established for co-use of trails and utilities, there is no Alaskan case law which substantiates these fears. The Borough Attorney's Office has conducted a search for case examples of trail liability on the Alaska State Court System law library Westlaw Computer. This computer network uses key "buzz words" to search for past legal cases which contain these words or phrases. Although several different key words including trail liability, recreational liability, recreation trail, utility liability, utility liability/trail, and trail easement liability were inserted into the computer, there was no case law found which demonstrated liability being incurred by private landowners or utility companies in relation to recreational trails.

Generally, liability results when a party creates or maintains the thing from which injury results. A party is not liable for injuries caused by defects not the result of his own action.

When co-use easements are established for both utility and trail use it can reasonably be anticipated that trail use of the easement will be greater than that which might occur on a utility easement alone. When a co-use easement is established with the knowledge of the utility company, the company may need to exercise extra caution in the location and design of utility improvements to avoid possible liability. This extra care required could increase cost of the utility company providing service. It is commonly known that utility easements are used for pedestrian walkways and other purposes, even if not legally noted for such use. In order to prevent liability on utility easements, a utility company should exercise care in the design so that these known uses are reasonably safe. When utility easements are identified for co-use with trails, depending on the circumstance, it may increase the level of care necessary to ensure reasonably safe conditions, hence increasing cost of the utility services. At the same time, with proper care in design, non-motorized or pedestrian trail co-use easements may not require a significantly different level of care than an ordinary utility easement.

Clubs or organizations which are responsible for maintenance of specified trails should not be liable for accidents on the trail unless the injury is caused by a dangerous situation created by the trail maintenance operations. Organizations with maintenance responsibility should exercise ordinary care to keep the trail in reasonably safe condition for the trails' intended purpose. The level of care required to meet the "reasonably safe condition" criteria should be spelled out in any agreements which assign maintenance responsibilities. The level of care could vary greatly depending upon the specific trail and its use.

III. SUMMARY

Although there are many legal parameters which must be considered in the development of a Borough recreational trail program, none of these legal issues constitute an insurmountable barrier. Development of statewide

and community trail programs is a relatively recent occurrence in the parks and recreation field. Because trails often cross a variety of land ownerships and jurisdictions, the laws and regulations which apply to trails can be varied and not located in a single source. For these reasons legal parameters concerning trails have often been viewed differently than more standard public facilities such as softball fields and road right-of-way which are usually controlled by a single public agency.

With the completion of a detailed analysis of existing legal authorities pertaining to public recreation facilities and rights-of-way, it is demonstrated, that, legally there is very little difference between recreational trails and other public facilities.

This review of the legal constraints pertaining to trails should be used by trail users, land owners and public agencies to identify and understand the legal basis of recreational trail establishment. This understanding should enable trail users and public agencies to better plan and implement specific trail projects and planning efforts.

Appendix A

Legal Citations

1. Alaska Statutes.....Page
2. Alaska Administrative Code.....Page
3. FNSB Code of Ordinances.....Page
4. Memorandums, resolutions.....Page

Chapter 30. Snow Vehicles.

Article

1. Registration (§§ 05.30.010 — 05.30.050)
2. Regulation and Equipment (§§ 05.30.070 — 05.30.080)
3. General Provisions (§§ 05.30.100 — 05.30.120)

Article 1. Registration.

Section

10. Unlawful to operate unregistered vehicle
20. Registration and registration fee

Section

30. Exemption from registration fee
40. Registration certificate and decals
50. Transfer of ownership

Sec. 05.30.010. Unlawful to operate unregistered vehicle.

Except for operation on the owner's private property, a person may not operate a snow vehicle unless the snow vehicle has been registered with the Department of Public Safety as provided in this chapter. (§ 1 ch 182 SLA 1968; am § 1 ch 214 SLA 1975)

Revisor's notes. — The phrase "a person may not operate a snow vehicle unless the snow vehicle has been registered" was substituted for "no person may operate a snow vehicle which has not been registered" by the revisor of statutes pursuant to AS 01.05.031(b).

Collateral references. — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 5, 55, 58, 215.
60 C.J.S. Motor Vehicles §§ 58-65, 97-101, 105-145.

Sec. 05.30.020. Registration and registration fee. A registration is valid for two years commencing September 1, 1968. The registration fee is \$5, which shall be paid into the general fund. (§ 1 ch 182 SLA 1968)

Sec. 05.30.030. Exemption from registration fee. Snow vehicles owned by the federal or state government or a political subdivision of the federal or state government shall be registered but are not required to pay a registration fee. (§ 1 ch 182 SLA 1968)

Sec. 05.30.040. Registration certificate and decals. (a) Upon registration of a snow vehicle, the registrant shall be issued a registration certificate and two numbered decals containing the registration number of the vehicle. Once a snow vehicle has been issued a number, it shall retain that number until the vehicle is destroyed, abandoned or permanently removed from the state. Numbered registration decals shall be displayed on each side of the cowl of a snow vehicle.

(b) As used in this section "cowl" means the forward or rear portion of a snow vehicle surrounding the motor and clutch assembly. (§ 1 ch 182 SLA 1968; AS 05.30.120(1))

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§ 05.30.050

AMUSEMENTS AND SPORTS

§ 05.30.080

Revisor's notes. — Pursuant to AS 01.05.031, the revisor of statutes designated former subsection (b) as the present third sentence of subsection (a) and added present subsection (b) which derived from former AS 05.20.120(1).

Sec. 05.30.050. Transfer of ownership. The Department of Public Safety shall adopt regulations to accomplish transfer of ownership of snow vehicles. (§ 1 ch 182 SLA 1968; am § 2 ch 214 SLA 1975)

Revisor's notes. — The word "adopt" was substituted for "promulgate" by the revisor of statutes under AS 01.05.031(b).

Article 2. Regulation and Equipment.

Section

70. Regulation by political subdivision
80. Equipment required

Sec. 05.30.070. Regulation by political subdivision. A city of any class, or an organized borough in the area outside cities, may, by ordinance, regulate the use and operation of snow vehicles. (§ 1 ch 182 SLA 1968)

Collateral references. — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 5, 58, 59, 61, 215. Criminal liability based on violation of statute specifically regulating operation of snowmobile. 45 ALR3d 1438.

Sec. 05.30.080. Equipment required. A snow vehicle is required to contain the following equipment:

- (1) brakes adequate to control the movement of and to stop and to hold the vehicle under normal conditions of operation;
- (2) at least one head lamp so aimed and of sufficient intensity to reveal persons and objects at a distance of at least 100 feet ahead during hours of darkness under normal atmospheric conditions;
- (3) a throttle which, when released by the hand, will return the engine speed to idle;
- (4) an exhaust muffler in good working order except at the operator's option when participating in an event permitted under AS 05.35. (§ 1 ch 182 SLA 1968; am § 3 ch 192 SLA 1970)

Collateral references. — 60 C.J.S. Motor Vehicles § 26. similar noise-preventing devices on motor vehicles, aircraft or boats. 49 ALR2d 1202.
Public regulation requiring mufflers or

Article 3. General Provisions.

Section

100. Reporting of accidents
110. Penalty
120. Definition

Sec. 09.45.795. Civil liability for personal injuries or death occurring on unimproved land. An owner of unimproved land is not liable in tort for damages for the injury to or death of a person who enters onto or remains on the unimproved portion of land if

(1) the injury or death resulted from a natural condition of the unimproved portion of the property; and

(2) the person had no responsibility to compensate the owner for the person's use or occupancy of the property. (§ 1 ch 138 SLA 1980)

Article 10. Earthslide Relief Act.

Section	Section
800. Prerequisite earthslide changing land boundaries	840. Lis pendens
805. Parties	845. Vacating of streets in whole or in part
810. Separate actions as to separate slide areas	850. Proof of facts
815. Complaint	855. Scope of judgment
820. Publication and posting of notice	860. Standards for judgment
825. Procedure applicable	865. Effect of judgment
830. Jurisdiction	870. Recording of judgment
835. Answer	875. Cumulative remedies
	880. Short title

Sec. 09.45.800. Prerequisite earthslide changing land boundaries. If the boundaries of land, owned either by public or by private persons have been moved by an act of God, consisting of an earthslide, so that they are in a location different from that at which, by solar survey, they were located before the earthslide, an action in rem to recognize the boundaries as they presently exist and to quiet title within the boundaries in the persons judicially found entitled to title under AS 09.45.800 — 09.45.880, is authorized, maintainable by the persons and with the procedures in AS 09.45.800 — 09.45.880 for the handling of the emergencies dealt with in this chapter. (§ 2 ch 80 SLA 1966)

Cross references. — For purpose of AS 09.45.800 — 09.45.880, see § 1, ch. 80, SLA 1966 in the Temporary and Special Acts.

Legislative history reports. — For report on ch. 80, SLA 1966, see 1966 Supplemental Journal No. 17, p. 1.

Sec. 09.45.805. Parties. (a) An action authorized by AS 09.45.800 — 09.45.880 may be commenced by

(1) a borough with the joinder of a city or cities included in the borough;

(2) a city not included within the boundaries of a borough, if the earthslide has affected land in the city, or land outside the city as to which outside land the city has statutory power to approve a land map;

(3) a school district which has statutory power to approve a land map; or

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Sec. 11.46.310. Burglary in the second degree. (a) A person commits the crime of burglary in the second degree if the person enters or remains unlawfully in a building with intent to commit a crime in the building.

(b) Burglary in the second degree is a class C felony. (§ 4 ch 166 SLA 1978)

NOTES TO DECISIONS

For cases construing former law, see notes to AS 11.46.300, analysis line II.

Applied in *McManners v. State*, Ct. App. Op. No. 123 (File No. 6065), 650 P.2d 414 (1982); *Linn v. State*, Ct. App. Op. No. 210 (File Nos. 6163, 6188), 658 P.2d 150 (1983).

Quoted in *Kirby v. State*, Ct. App. Op. No. 117 (File No. 5738), 649 P.2d 963 (1982).

Cited in *Ozenna v. State*, Sup. Ct. Op. No. 2209 (File No. 4748), 619 P.2d 477 (1980); *Zurfluh v. State*, Sup. Ct. Op. No. 2238 (File No. 4697), 620 P.2d 690 (1980); *Kanipe v. State*, Sup. Ct. Op. No. 2242 (File No. 4993), 620 P.2d 678 (1980); *Nix v. State*, Ct. App. Op. No. 008 (File No. 4879), 624 P.2d 825 (1981); *Koteles v. State*, Ct. App. Op. No. 232 (File No. 6782), 660 P.2d 1199 (1983).

Sec. 11.46.320. Criminal trespass in the first degree. (a) A person commits the crime of criminal trespass in the first degree if the person enters or remains unlawfully

- (1) on land with intent to commit a crime on the land; or
- (2) in a dwelling.

(b) Criminal trespass in the first degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978; am § 12 ch 102 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "land" for "real property" at the beginning of paragraph (1) in subsection (a), and substituted "the land" for "that real property" near the end of paragraph (1) in subsection (a).

Collateral references. — 35 Am. Jur. 2d, *Forcible Entry and Detainer*, §§ 58 — 61; 52 Am. Jur. 2d, *Malicious Mischief*, § 1 et seq.; 75 Am. Jur. 2d, *Trespass*, §§ 86 — 94.

36 C.J.S. *Forcible Entry and Detainer*, § 1 et seq.; 54 C.J.S. *Malicious Mischief*, § 1 et seq.; 87 C.J.S. *Trespass* §§ 140 — 165.

Forcible detainer or trespass, where entry was peaceable, 49 ALR 597.

Right to use force to obtain possession of real property to which one is entitled, 141 ALR 273.

Validity, construction, and application of statutes or ordinances penalizing one who enters or remains in dwelling after having been forbidden to do so, 146 ALR 655.

Injunction against repeated or continuing trespasses on real property, 60 ALR2d 310.

Uninvited entry into another's living quarters as invasion of privacy, 56 ALR3d 434.

Sec. 11.46.330. Criminal trespass in the second degree. (a) A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully

- (1) in or upon premises; or
- (2) in a propelled vehicle.

(b) Criminal trespass in the second degree is a class B misdemeanor.
(§ 4 ch 166 SLA 1978)

Cross references. — For provisions authorizing arrest without warrant in certain cases where the police officer has reasonable cause to believe that the person has committed a crime under this section, see AS 12.25.030(b).

NOTES TO DECISIONS

Cited in *Moxie v. State*, Ct. App. Op. No. 246 (File No. 7192), 662 P.2d 990 (1983).

Sec. 11.46.340. Defense: emergency use of premises. In a prosecution under AS 11.46.300, 11.46.310, 11.46.320, or 11.46.330(a)(1), it is an affirmative defense that

(1) the entry, use, or occupancy of premises or use of personal property on the premises is for an emergency in the case of immediate and dire need; and

(2) as soon as reasonably practical after the entry, use, or occupancy, the person contacts the owner of the premises, the owner's agent or, if the owner is unknown, the nearest state or local police agency, and makes a report of the time of the entry, use, or occupancy and any damage to the premises or personal property, unless notice waiving necessity of the report is posted on the premises by the owner or the owner's agent. (§ 4 ch 166 SLA 1978)

Sec. 11.46.350. Definition. (a) As used in AS 11.46.300 — 11.46.350, unless the context requires otherwise, "enter or remain unlawfully" means to

(1) enter or remain in or upon premises or in a propelled vehicle when the premises or propelled vehicle, at the time of the entry or remaining, is not open to the public and when the defendant is not otherwise privileged to do so;

(2) fail to leave premises or a propelled vehicle that is open to the public after being lawfully directed to do so personally by the person in charge; or

(3) enter or remain upon premises or in a propelled vehicle in violation of a provision in an order issued under AS 25.35.010(b) or 25.35.020.

(b) For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so unless

(1) notice against trespass is personally communicated to that person by the owner of the land or some other authorized person; or

(2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances. (§ 4 ch 166 SLA 1978; am § 9 ch 61 SLA 1982)

§ 19.05.020

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§ 19.05.030

HIGHWAYS AND FERRIES

§ 19.05.030

Sec. 19.05.030. Duties of department. The department has the following duties:

- (1) direct approved highway planning and construction and maintenance, protection and control of highways;
- (2) employ assistants and employees;
- (3) certify and approve vouchers;
- (4) provide a program of highway research;
- (5) prepare a budget;
- (6) review the annual highway program.
- (7) develop and implement an avalanche control plan to protect persons who use public highways. (§ 2 art IV title I ch 152 SLA 1957; am § 2 ch 119 SLA 1980)

Cross references. — As to participation in statewide avalanche warning system, see AS 18.76.010.

Effect of amendments. — The 1980 amendment added paragraph (7).

NOTES TO DECISIONS

Responsibility for highway maintenance. — This title provides that the Department of Highways [now Department of Transportation and Public Facilities] is responsible for highway maintenance. *State v. Abbott*, Sup. Ct. Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

Title fails to specify standard for measuring performance of duty. — See *State v. Abbott*, Sup. Ct. Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

The scope of the state's duty to maintain highways should be defined by ordinary negligence principles. *State v. Abbott*, Sup. Ct. Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

Highway authorities have a duty to exercise reasonable care to keep the highway in a safe condition. *State v. Abbott*, Sup. Ct. Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

As to duty of care the state owes to persons using its highways in general, see *State v. Abbott*, Sup. Ct. Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

The duty to maintain a highway safe for travel includes not only a duty to maintain the surface of the highway in a condition reasonably safe for travel, but also a duty of warning the travelling public of any other condition which endangers travel, whether caused by a force of nature, such as snow or ice, or by the act of third persons, such as a ditch dug in the sidewalk or roadway or an obstruction placed upon it. *State v. Abbott*, Sup. Ct.

Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

Liability of state for negligent winter highway maintenance. — See *State v. Abbott*, Sup. Ct. Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

Once the basic decision to maintain the highway in a safe condition throughout the winter is reached, the state should not be given discretion to do so negligently. *State v. Abbott*, Sup. Ct. Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

In some circumstances the state will be held liable for dangerous highway conditions caused by ice and snow accumulation. *State v. Abbott*, Sup. Ct. Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

To impose a lesser standard of care upon the state for highway maintenance would substantially diminish the risk-spreading effects of AS 09.50.250 and seriously undermine the sound policy consideration upon which it is based. *State v. Abbott*, Sup. Ct. Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

In making a determination of negligence by the state in maintaining highways, all of the following factors would be relevant: Whether the state had notice of the dangerous condition, the length of time the ice and snow had been on the highway, the availability of men and equipment, and the amount of traffic on the highway. *State v. Abbott*, Sup. Ct. Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

19.25.170

§ 19.25.180

HIGHWAYS AND FERRIES

§ 19.25.230

Sec. 19.25.180. Interpretation. Nothing in AS 19.25.080 — 19.25.180 shall be construed to abrogate or affect any law, ordinance, regulation or resolution which is more restrictive than the provisions of AS 19.25.080 — 19.25.180. (§ 5 ch 233 SLA 1968)

Article 4. Encroachments In Highways.

Section

200. Encroachment permits

210. Relocation or removal of encroachment

220. Unauthorized encroachments

Section

230. Notice of removal

240. Summary removal

250. Removal after noncompliance; removal expense

Sec. 19.25.200. Encroachment permits. An encroachment may be constructed, placed, changed or maintained across or along a highway but only in accordance with regulations adopted by the department. No encroachment may be constructed, placed, maintained or changed until it is duly authorized by a written permit issued by the department. (§ 2 ch 64 SLA 1971)

Collateral references. — 3 Am. Jur. 2d, Highways, Streets and Bridges, § 288. Advertising, §§ 5, 13, 14. 40 Am. Jur. 2d, 40 C.J.S., Highways, §§ 217-231.

Sec. 19.25.210. Relocation or removal of encroachment. If, incidental to the construction or maintenance of a state highway, the department determines and orders that an encroachment previously authorized by written permit must be changed, relocated, or removed, the owner of the encroachment shall change, relocate or remove it at no expense to the state (except as provided in AS 19.25.020), within a reasonable time set by the department. If the owner does not change, relocate or remove an encroachment within the time set by the department, the encroachment shall be considered an unauthorized encroachment and subject to the provisions of AS 19.25.220 — 19.25.250. (§ 2 ch 64 SLA 1971)

Sec. 19.25.220. Unauthorized encroachments. If an unauthorized encroachment exists in, on, under or over a state highway, the department may require the removal of the encroachment in the manner provided in AS 19.25.230 — 19.25.250. (§ 2 ch 64 SLA 1971)

Sec. 19.25.230. Notice of removal. Except as otherwise provided in AS 19.25.200, 19.25.210 and 19.25.240, notice shall be given the owner, occupant or person in possession of the encroachment, or to any other person causing or permitting the encroachment to exist, by serving upon any of them a notice demanding the removal of the encroachment. The notice shall describe the encroachment complained of with reasonable certainty as to its character and location. Service of the notice may be made by certified mail. (§ 2 ch 64 SLA 1971)

Chapter 45. Miscellaneous Provisions.

Section

01. Definitions

02. Penalties

15. Highway construction near airports

Sec. 19.45.001. Definitions. In AS 19.05 — 19.40

(1) "commissioner" means the commissioner of transportation and public facilities;

(2) "construction" or any derivation means construction, reconstruction, alteration, improvement or major repair;

(3) "controlled-access facility" means a highway especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have either no right or easement or only a controlled right or easement of access, light, air, or view;

(4) "cost of change, relocation, or removal" means the entire cost incurred by the utility properly attributed to the change, relocation, or removal of a facility, less any costs for improvements or upgrading over and above the cost of a functionally equal facility; if a facility is to be relocated and replaced with new equipment, there shall also be subtracted from the entire cost any salvage value derived from the old facility;

(5) "department" means the Department of Transportation and Public Facilities;

(6) "excess lands" means land acquired by the state in excess of land required for a highway, when the remaining portion of a parcel of land so acquired is left in such shape or condition as to be of little or no value to its owner, or to give rise to claims or litigation concerning severance or other damage;

(7) "federal-aid primary, federal-aid secondary, and interstate system" include any highway which is a part of the federal-aid systems as provided in the Federal-Aid Highway Act of 1956, and any laws amending or supplementing it;

(8) "highway" includes a highway (whether included in primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof, and further includes a ferry system, whether operated solely inside the state or to connect with a Canadian highway, and any such related facility;

(9) "maintenance" means the preservation of each type of highway, roadside structure and facility as nearly as possible in its original condition as constructed, or as subsequently improved, and the operation of highway facilities and services to provide satisfactory and safe highways;

(10) "municipality" means an incorporated city or political subdivision which has jurisdiction over highways in its incorporated area;

§ 29.48.020

MUNICIPAL GOVERNMENT

§ 29.48.030

Applied in *Libby v. City of Dillingham*,
Sup. Ct. Op. No. 2097 (File No. 3861), 612
P.2d 33 (1980).

Sec. 29.48.020. Second class borough powers outside cities. A second class borough may, in the area outside cities,

- (1) regulate or prohibit the offering for sale, exposure for sale, sale, use, or explosion of fireworks;
- (2) provide for the licensing, impounding, and disposition of animals;
- (3) regulate the licensing and operation of motor vehicles and operators;
- (4) regulate snow vehicles as provided in AS 05.30.070;
- (5) provide for garbage and solid waste collection and disposal subject to AS 29.48.033;
- (6) provide for water pollution control;
- (7) establish or participate in federal and state government loan programs for housing rehabilitation and improvement for conservation of energy;
- (8) provide for the acquisition and construction of local service roads and trails under AS 19.30.111 — 19.30.251.
- (9) establish an emergency communications center under AS 29.73.080. (§ 2 ch 118 SLA 1972; am § 5 ch 83 SLA 1980; am § 12 ch 38 SLA 1981; am § 1 ch 107 SLA 1981)

Revisor's notes. — As enacted, paragraph (9) was designated as paragraph (8) but was renumbered by the revisor of statutes pursuant to AS 01.05.031(b).

Effect of amendments. — The 1980 amendment added paragraph (7).

The first 1981 amendment added paragraph (8).

The second 1981 amendment added paragraph (9).

Article 2. Facilities, Services and Regulation.

Section

30. Municipal facilities and services
33. Garbage and solid waste services
35. Regulatory powers
37. Extraterritorial jurisdiction

Section

60. Public utilities rates
108. Creation of historical district commissions
110. Establishment of historical districts

Sec. 29.48.030. Municipal facilities and services. (a) A municipality may exercise the powers necessary to provide the following public facilities and services:

- (1) streets and sidewalks;
- (2) sewers and sewage treatment facilities;
- (3) harbors, wharves, and other marine facilities;
- (4) watercourse and flood control facilities;
- (5) health services and hospital facilities;
- (6) cemeteries;

- (7) police protection and jail facilities;
- (8) cold storage plants;
- (9) telephone systems;
- (10) light, power and heat;
- (11) water;
- (12) transportation systems;
- (13) community centers;
- (14) libraries, visual or performing arts centers, or museums;
- (15) recreation facilities;
- (16) airport and aviation facilities;
- (17) garbage and solid-waste collection and disposal service and facilities subject to AS 29.48.033;
- (18) fire protection service and facilities, not in conflict with AS 18.70.075, but not limited to AS 18.70.075;
- (19) parking and parking facilities;
- (20) housing and urban renewal, rehabilitation and development;
- (21) preservation, maintenance and protection of historic sites, buildings and monuments;
- (22) consumer protection;
- (23) emergency medical services and facilities.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section or § 33(a) of this chapter only after they have been assumed in the manner required under AS 29.33.250 — 29.33.290 for areawide exercise or in the manner required under AS 29.38.010 — 29.38.050 for exercise in the borough area outside cities, or are conferred by § 20 of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a) (12) of this section, exercise of the powers areawide or in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. With respect only to boroughs which on September 10, 1972 are not exercising powers conferred under (a) (12) of this section on an areawide basis, objection which a city may raise to areawide exercise of the powers by a borough shall be reviewed by the Alaska Transportation Commission. The commission shall decide whether exercise of the powers exclusively by the borough areawide is to be approved as in the public interest under the particular facts and circumstances at issue. (§ 2 ch 118 SLA 1972; am § 3 ch 215 SLA 1975; am § 4 ch 78 SLA 1978; am § 5 ch 62 SLA 1979)

Cross references. — As to emergency medical services, see AS 18.08.010 — 18.08.090.

Effect of amendments. — The 1975 amendment added "not in conflict with AS 18.70.075, but not limited to AS 18.70.075" to the end of paragraph (18) of subsection (a).

The 1978 amendment added paragraph (23) to subsection (a).

The 1979 amendment added "visual or performing arts centers, or museums" to the end of paragraph (14).

Applied:
Sup. Ct. Op.
P.2d 33 (1979)

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NOTES TO DECISIONS

Definition of collect. — Collect is defined as the "bring[ing] together into one body or place." *McClellan v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

Definition of disposal. — Disposal means the act of passing over the control of solid waste to the operators of a disposal site. *McClellan v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

Dumpsters are garbage containers. — Drop-boxes and dumpsters, which are used as intermediate disposal facilities, are garbage and refuse containers. *McClellan v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

And are not equivalent of final landfill sites. — Interpretation that

dumpsters serving as intermediate dump sites qualify as the functional equivalent of final landfill sites is not reasonable in that it would allow the Borough to place dumpsters in such a pervasive fashion as to completely vitiate the requirement of subsection (b) of this section and AS 42.05.221(f) that certificate holders be compensated for their interests. *McClellan v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

Operation of garbage disposal sites does not constitute a utility service; it is only the passing over of control of solid waste to the disposal site operator which is regulated as a utility function. *McClellan v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

Sec. 29.48.035. Regulatory powers. (a) A municipality may regulate the operation and use of its public rights-of-way, public facilities and services. It may also regulate the following:

(1) vehicle, pedestrian, and other traffic, and licensing and operation of motor vehicles, including snow vehicles and off-highway vehicles, and operators not inconsistent with AS 28.01.010;

(2) licensing of drivers of taxicabs, for-hire automobiles, motor buses, or other vehicles for the transportation of passengers or baggage not inconsistent with AS 28.01.010;

(3) vehicle parking not inconsistent with AS 28.01.010;

(4) transportation fares;

(5) licensing, impounding and disposition of animals;

(6) selling of goods;

(7) selling of food;

(8) abandoned property;

(9) dangerous and disorderly conduct;

(10) alcoholic beverages as provided by AS 04.21.010;

(11) recreational devices as provided by AS 05.20.100;

(12) control of insects and rodents;

(13) offering for sale, exposure for sale, sale, use, or explosion of fireworks;

(14) building, housing and related codes, which may be provided by cities within cities or, in the manner required in (b) or (c) of this section, by first or second class boroughs in the borough area outside cities or areawide, subject to the following:

(A) exceptions to requirements of the codes may be made in the codes among other reasons, in order to provide for the preservation, maintenance and protection of historic sites, buildings and monuments;

DECISIONS

dumpsters serving as intermediate dumpsites qualify as the functional equivalent of final landfill sites is not reasonable in that it would allow the Borough to place dumpsters in such a pervasive fashion as to completely vitiate the requirement of subsection (b) of this section and AS 29.48.020 that certificate holders be compensated for their interests. *McClellan v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 5 (1977).

Operation of garbage disposal sites does not constitute a utility service; it is only the passing over of control of solid waste to the disposal site operator which is regulated as a utility function. *McClellan v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 5 (1977).

rs. (a) A municipality may regulate rights-of-way, public facilities following:

ffic, and licensing and operation of vehicles and off-highway vehicles, AS 28.01.010:

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by AS 04.21.010;

d by AS 05.20.100:

sale, sale, use, or explosion of

odes, which may be provided by required in (b) or (c) of this section, in the borough area outside cities or

codes may be made in the codes for the preservation, maintenance, and monuments;

(B) codes may not be used to prohibit or restrict the development or use of solar or wind energy unless the assembly or council finds that the development or use of solar or wind energy would endanger the health or safety of the public;

(15) condemnation and abatement of public nuisances and hazards;

(16) garbage and solid-waste collection and disposal;

(17) water pollution control;

(18) air pollution control as provided in AS 46.03.140 — 46.03.240;

(19) other powers and functions affecting the general health, safety, well-being and welfare of its inhabitants;

(20) licensing of day care facilities.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.33.250 — 29.33.290 for areawide exercise or in the manner required under AS 29.38.010 — 29.38.050 for exercise in the borough area outside cities or are conferred by AS 29.48.020 for exercise in the borough area outside cities. However, as to powers conferred under (a)(5), (17), (18) and (20) of this section, exercise of the powers areawide or, as to (a)(5), (17) and (20), in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

(c) The provisions of (b) of this section notwithstanding, boroughs which on September 10, 1972 are exercising building, housing or related code powers, except as those code powers relate to flood control, on an areawide basis or in the borough area outside cities shall, subject to acquisition of the powers on an areawide basis by transfer or election as provided in (b) of this section, exercise the powers in the borough area outside cities and, upon agreement of the city and borough, within any city, home rule or otherwise, in which the powers are being exercised on September 10, 1972; if the city does not agree to continue borough exercise of the powers within the city, the city shall exercise the powers within the city. (§ 2 ch 118 SLA 1972; am § 44 ch 53 SLA 1973; am §§ 2—4 ch 91 SLA 1974; am § 18 ch 241 SLA 1976; am §§ 4, 5 ch 253 SLA 1976; am § 6 ch 83 SLA 1980; am § 63 ch 59 SLA 1982)

Effect of amendments. — The 1973 amendment substituted "46.03.140 — 46.03.240" for "18.30" in paragraph (18) of subsection (a).

The 1974 amendment, in subsection (a), inserted "vehicle and pedestrian traffic," "other highway vehicles," and "not inconsistent with AS 28.01.010" in para-

graph (1), added "not inconsistent with AS 28.01.010" to the end of paragraph (2), and substituted "not inconsistent with AS 28.01.010" for "and traffic" in paragraph (3).

The first 1976 amendment, in paragraph (1) of subsection (a), deleted "and" preceding "pedestrian," inserted "and

Sec. 38.05.315. Public and charitable use. (a) The lease, sale, or other disposal of state land or resources may be made to a state or federal agency or political subdivision, or the lease, sale, or disposal of coal deposits suitable for mining may be made to a utility owned and operated by a government agency or nonprofit cooperative association organized to participate under the Federal Rural Electrification Act for the purpose of generating electric power and energy or the production of process steam, or both, for less than the appraised value as determined by the director and approved by the commissioner to be fair and proper and in the best interests of the public, with due consideration given to the nature of the public services or function rendered by the agency, subdivision, or utility making application, and of the terms of the grant under which the land was acquired by the state.

(b) Notwithstanding AS 38.05.070 — 38.05.080 and 38.05.095, the director, upon application filed by an applicant eligible under (b) — (d) of this section, may, by negotiation and without public auction in the manner prescribed in (b) — (d) of this section, lease state land for a term of not more than 55 years. Before leasing, the director shall prepare a land use plan and a land classification to insure that the proposed use is compatible with area utilization. Before the land may be leased under (b) — (d) of this section, it must be shown to the satisfaction of the director that the land is to be used for an established or definitely proposed project, and that the eligible applicant has the financial ability to carry out the project. The commissioner may establish limitations on the acreage which may be leased under (b) — (d) of this section to an applicant.

(c) Eligible applicants under (b) — (d) of this section are limited to nonprofit corporations, associations, clubs, or societies organized and operated exclusively for charitable, religious, scientific, or educational purposes, or for the promotion of social welfare, if the project for which the land is desired conforms to those objectives and not commercial development. No lease of land may be granted under this section for a project closed to the use and enjoyment of the general public. In every case the applicant shall submit evidence that it is exempt from payment of federal income tax. As a condition of and in consideration of the rights acquired under a lease granted under (b) — (d) of this section, each eligible organization and its parent or subsidiary organizations shall (1) maintain and preserve books, accounts, and records that the director prescribes by regulation as necessary and appropriate; and (2) accord at all reasonable times to the state and its authorized agents and auditors the right of access to those books, accounts and records for the purpose of inspecting, examining and copying them. Any information provided the state in the course of an audit becomes a matter of public record.

(d) The director may lease the land to an eligible applicant at a reasonable annual rental, taking into consideration the purposes for

which the land is to be used and the financial resources of the applicant. The rental may not be less than one percent of the fair market value on lands acquired primarily for development, or less than five percent of the fair market value on university or acquired lands. Rent may not be charged for state land leased for a youth encampment. For the purposes of this subsection, "youth encampment" shall be defined by the commissioner by regulation. Renewal leases may be issued at the discretion of the director upon the expiration of a primary or renewal term. Each lease shall contain a provision for its termination as to all or part of the lands upon a finding by the director that the land or a part of it has not been used by the lessee for the purpose specified in the lease for a period of two years. No lease may be assigned or subleased except with the consent of the director, and in any case may only be transferred to an applicant eligible under (b) — (d) of this section. A lessee may not change the use specified in the lease to another or additional use except with the consent of the director. If, at any time after the land is leased, the lessee attempts to assign the lease or transfer control over the land to another, or if the land is devoted to a use other than that for which the land was leased without the consent of the director, the lease automatically terminates.

(e) The lease, sale, or other disposal of state land at appraised fair market value may be negotiated with a licensed public utility or a licensed common carrier by the director with the approval of the commissioner if the utility or carrier reasonably requires the land for the conduct of its business under its license.

(f) The commissioner shall lease state land for telephone or electric transmission and distribution lines for less than the appraised value of the land if the lessee is a nonprofit cooperative association organized under AS 10.25.010 — 10.25.650. Before he determines the annual rental, the commissioner shall consider the nature of the public service rendered by the nonprofit cooperative association and the terms of the grant under which the land was acquired by the state. A nonprofit cooperative association may not construct improvements other than transmission or distribution lines and substations on land leased under this subsection. (§ 4 art III ch 169 SLA 1959; am § 1 ch 155 SLA 1960; am § 1 ch 137 SLA 1962; am § 1 ch 36 SLA 1976; am § 12 ch 257 SLA 1976; am § 1 ch 76 SLA 1980; am §§ 34, 35 ch 113 SLA 1981)

Effect of amendments. — The 1980 amendment added subsection (f).

The 1981 amendment added "and" preceding "38.05.095" and deleted "and AS 38.05.100" preceding "the director" in the first sentence of subsection (b). In subsection (d), the amendment substituted "the"

for "but in no case may the" preceding "rental," added "may not" preceding "be less than one," deleted "school" preceding "university" and deleted "mental health" preceding "or acquired lands" in the second sentence and added the present third and fourth sentences.

(b) State land classified as agricultural land which has been selected by a municipality under AS 29.18.190 — 29.18.200 or 29.18.205(e) may be approved by the director for patent under AS 29.18.205(f); however, only rights in the land for agricultural purposes may be transferred and all other interests in the land will remain with the state. Agricultural land approved for patent to a municipality under AS 29.18.205(f) shall be credited, acre for acre, toward fulfillment of that municipality's entitlement under AS 29.18.201 — 29.18.203. If the director later determines it to be in the best interests of the state to transfer some or all of the additional rights in that approved or patented agricultural land, those rights shall pass without consideration to the municipality in which the land is located. The notice and review provisions of AS 38.05.305 and 38.05.345 are applicable to conveyance of rights under this section.

(c) The provisions of this section do not apply to state land classified as agricultural land which has been selected by a municipality under the provisions of AS 29.18.190 — 29.18.200 if the selection is an approved selection before April 1, 1978 and is otherwise valid under AS 29.18.205(b). (§ 3 ch 71 SLA 1976; am § 3 ch 180 SLA 1978)

Effect of amendments. — The 1978 amendment rewrote this section.

Editor's notes. — Sections 29.18.190 and 29.18.200, referred to in subsections (b) and (c), were repealed by § 5, ch. 180, SLA 1978.

AS 38.05.305, referred to in subsection (b), was repealed by § 45, ch. 113, SLA 1981.

Sec. 38.05.325. Homestead entry.

Repealed by § 45 ch 85 SLA 1979.

Editor's notes. — The repealed section derived from § 6, art. III, ch. 169, SLA 1959; § 1, ch. 72, SLA 1966.

Sec. 38.05.330. Permits. (a) The director, without the prior approval of the commissioner, may issue permits, rights-of-way or easements on state land for roads, trails, ditches, field gathering lines or transmission and distribution pipelines not subject to AS 38.35.010 — 38.35.260, telephone or electric transmission and distribution lines, log storage, oil well drilling sites and production facilities for the purposes of recovering minerals from adjacent lands under valid lease, and other similar uses or improvements, or for the limited personal use of timber or materials. The commissioner, upon recommendation of the director, shall establish a reasonable rate or fee schedule to be charged for these uses, subject to the exception for nonprofit cooperative associations specified in (b) of this section. In the granting, suspension or revocation of a permit or easement of lands, the director shall give

preference to that use of the land which will be of greatest economic benefit to the state and the development of its resources. However, first preference shall be granted to the upland owner for the use of a tract of tideland, or tideland and contiguous submerged land, which is seaward of the upland property of the upland owner and which is needed by the upland owner for any of the purposes for which the use may be granted.

(b) The fee charged for a right-of-way approved under (a) of this section shall be waived by the commissioner if the right-of-way is for a transmission or distribution line established by a nonprofit cooperative association organized under AS 10.25.010 — 10.25.650 for the purpose of supplying electric energy and power, or telephone service, to its members, and the waiver is considered by the commissioner to be in the best interests of the state. (§ 7 art III ch 169 SLA 1959; am § 7 ch 61 SLA 1960; am § 4 ch 72 SLA 1972; am § 28 ch 3 FSSLA 1973; am § 13 ch 257 SLA 1976; am §§ 1, 2 ch 25 SLA 1979)

Effect of amendments. — The 1979 amendment added the subsection (a) designation, and in that subsection, substituted "telephone or electric transmission and distribution lines" for "telephone and transmission lines" in the first sentence and added the language beginning "subject to the exception" to the end of the second sentence. The amendment also added subsection (b).

NOTES TO DECISIONS

Cited in *Chevron U.S.A., Inc. v. LeResche*, Sup. Ct. Op. No. 2659 (File Nos. 6396, 6648), P.2d (1983).

Sec. 38.05.335. Deposits. (a) The director may require an applicant seeking the sale, lease or other disposal of lands, other than under an oil and gas or mineral lease, to deposit an amount covering the estimated cost of an appraisal, survey and necessary advertising. All deposited funds not expended shall be refunded to the applicant. If lands are sold or leased to other than the applicant making the deposit, the party awarded the lands shall pay the total actual cost of appraising and surveying the lands, together with the total actual cost of advertising, and the deposit shall be returned to the original applicant.

(b) Except as provided in (c) of this section, if a competitive sale or lease of state land, minerals, timber or materials is to be made by sealed bid, the director may require each bidder to submit an earnest money deposit with his bid. If the sale or lease is by public auction, the director may require each person desiring to bid to make an earnest money deposit before bidding. The earnest money deposit of the highest qualified bidder shall be applied toward the sale or lease price. If the successful bidder defaults in the payment of his bid, his deposit shall be forfeited to the state. All other earnest money deposits shall be

development of trails under 16 U.S.C. 460d, 4601-4 to 4601-11 and 23 U.S.C. 120 (note) (P.L. 88-578, Land and Water Conservation Fund Act of 1965). (§ 1 ch 102 SLA 1969)

Revisor's notes. — Formerly AS 41.20.100 and renumbered in 1969. 41.20.120. Renumbered in 1983. Enacted

Sec. 41.21.864. Grants for the establishment of trails and footpaths. (a) Within the limits of available appropriations, a city or borough of any class is entitled to state grants for the purpose of acquiring land or rights-of-way over land and establishing and maintaining trails and footpaths on that land or those rights-of-way.

(b) Within the limits of available appropriations, the Department of Transportation and Public Facilities is entitled to state grants for the establishment and maintenance of footpaths and trails along certain designated existing highways or when a highway, road or street is being constructed, reconstructed or relocated after June 7, 1972.

(c) Before a grant is awarded under this section, application shall be submitted to the commissioner of natural resources, accompanied by a comprehensive plan for the establishment of trails and paths. The plan may provide for ski trails, dog sled trails, motorized vehicle trails, bicycle paths, bridle paths, footpaths and other trails and paths, and designate separate and incompatible uses of these trails and paths.

(d) Upon approval of the plan, funds shall be utilized and disbursed to cities and boroughs and to the Department of Transportation and Public Facilities according to regulations established by the commissioner of natural resources.

(e) Before the distribution of funds by the commissioner of natural resources, consideration shall be given to the extent of funding available under other federal, local and state aid programs.

(f) Nothing in AS 41.21.864 — 41.21.872 prohibits a city or borough for which a grant is authorized from entering into an agreement with the Department of Natural Resources for the establishment and maintenance of trails and footpaths outside cities and boroughs. (§ 1 ch 107 SLA 1972; am § 1 ch 75 SLA 1974)

Revisor's notes. — Formerly AS 41.20.355. Renumbered in 1983.

Sec. 41.21.866. Paths and trails along highways. The commissioner of transportation and public facilities shall administer the plan and program providing for the establishment and maintenance of footpaths, bridle paths, bicycle paths, ski trails, dog sled trails, motorized vehicle trails and other paths and trails along certain designated existing highways, or when a highway, road or street is being constructed, reconstructed or relocated after June 7, 1972. Trails established under an approved plan submitted by the Department of Trans-

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portation and Public Facilities may be used for those types of uses written into the plan. A uniform system of marking the paths and trails established under this section shall be established by the commissioner of transportation and public facilities. (§ 1 ch 107 SLA 1972; am § 2 ch 75 SLA 1974)

Revisor's notes. — Formerly AS 41.20.360. Renumbered in 1983.

Sec. 41.21.868. Authorization of funds. (a) An amount of not less than three-eighths of one per cent nor more than one per cent of the total yearly state and federal matching sum combined, under the federal-aid highways program (23 U.S.C.), shall be appropriated annually from the general fund to the department for the purposes of providing grants to eligible cities and boroughs for trails, footpaths and shelter construction and maintenance in appropriate areas, including but not limited to existing park and recreation areas and for the purpose of providing grants to the Department of Transportation and Public Facilities for developing the program specified in AS 41.21.864(b) and 41.21.866.

(b) Except as provided in (c) of this section, the sums appropriated under this section shall continue to be available for expenditure by the departments or by eligible cities and boroughs for a period of three years after the close of the fiscal year for which the sums are authorized, unless they are obligated for expenditure, in which case they shall remain available until spent. Any amounts not obligated remaining unexpended at the end of the three-year period lapse.

(c) The amount expended by a city or borough under AS 41.21.864(a) or by the Department of Transportation and Public Facilities under AS 41.21.864(b) and 41.21.866, shall never in any one fiscal year be less than 10 per cent of the total amount of the funds it receives in that year for the purposes authorized in AS 41.21.864 — 41.21.872. (§ 1 ch 107 SLA 1972; am § 3 ch 75 SLA 1974)

Revisor's notes. — Formerly AS 41.20.365. Renumbered in 1983.

Sec. 41.21.870. Use and marking of trails and footpaths. Trails established under AS 41.21.864(a) may be used for more than one type of transportation, motorized or nonmotorized, as considered appropriate by the commissioner. Except along highways within the jurisdiction of the Department of Transportation and Public Facilities, the department shall provide a uniform system of marking trails and footpaths. (§ 1 ch 107 SLA 1972)

vehicle was driven or parked without his consent.

(d) Except when necessary to avoid conflict with other traffic, or to comply with statutes, regulations or ordinances, the directions of a police officer, fireman, authorized flagman, or official traffic-control device, no person may

(1) stop, stand or park a vehicle

(A) on the roadway side of a vehicle stopped or parked at the edge or curb of a street;

(B) on a sidewalk;

(C) within an intersection;

(D) within a crosswalk;

(E) between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;

(F) alongside or opposite a street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(G) upon a bridge or other elevated structure upon a highway or within a highway tunnel;

(H) on a railroad track;

(I) on a controlled-access highway;

(J) in the area between roadways of a divided highway, including crossovers; or

(K) at a place where official traffic-control devices prohibit stopping;

(2) stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers

(A) in front of a public or private driveway;

(B) on private property without the consent of the owner or person in control of the property;

(C) in an alley in a business district where no parking spaces are provided, except for the expeditious loading or unloading of freight, materials or passengers, or in a manner or under conditions which leaves less than 10 feet of the width of the alley for the movement of vehicular traffic, or in a position which blocks the driveway entrance to abutting property;

(D) within 15 feet of a fire hydrant;

(E) within 20 feet of a crosswalk at an intersection;

(F) within 30 feet on the approach side of a flashing signal, stop sign, yield sign, or traffic-control signal located at the side of a roadway;

(G) within 20 feet of the driveway entrance to a fire station or within the area directly across the street from the entrance to a fire station, if the distance from the driveway entrance of the station to the opposite side of the street or roadway or opposite curb is less than 75 feet; or

(H) at a place where an official traffic-control device prohibits standing;

(3) park a vehicle

(A) within 50 feet of the nearest rail of a railroad crossing; or

(B) at a place where official traffic-control devices prohibit parking. (In effect before 7/28/59; am 12/15/61, Reg. 3; am 8/10/66, Reg. 22; am 12/31/69, Reg. 31; am 6/28/79, Reg. 70)

Authority: AS 28.05.011

13 AAC 02.345. OFFICERS AUTHORIZED TO REMOVE VEHICLES. (a) If a vehicle is in violation of the provisions of secs. 340-372 of this chapter, or is left on a roadway or under circumstances which obstruct the normal movement of traffic, a police officer may move the vehicle, or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway or to a safe place on the roadway.

(b) A police officer may impound and remove to a place of safety a vehicle which

(1) is found in the state and which has been previously reported stolen or taken without the owner's consent;

(2) is found or operated on a highway or ferry facility without license plates or other evidence of registration or which evidence is false with respect to that vehicle; or

(3) is found or presumed to be abandoned as provided in AS 28.11.020, except that a vehicle is not considered abandoned if left standing or parked in excess of the time specified in AS 28.11.020 when the owner or driver of the vehicle has given notice to a municipal police department, if the vehicle is located within a municipality, or to the nearest office of the Alaska State Troopers, specifying the circumstances which require standing or parking in excess of the time specified in AS 28.11.020, and the provisions the owner or driver is making to remove the vehicle.

(c) When a police officer arrests and detains the driver of a motor vehicle, the officer shall impound and remove the vehicle to a place of safety; however, the officer shall inform the driver that he may elect to have another immediately available person, who is legally licensed to drive a motor vehicle, drive or otherwise remove the vehicle as the driver directs. The driver may designate the nearest available garage or tow car operator of his choosing to remove the vehicle. If the driver does not so indicate, the officer shall make the arrangements necessary to remove the vehicle.

(d) When a vehicle is impounded and removed from a highway or elsewhere at the direction of a police officer, the vehicle shall be removed to a place of safety. The owner or driver may claim the vehicle by securing a written release for it from the police officer or agency ordering its removal. A vehicle legally removed or impounded may not be released to the owner, nor may the owner secure its use until the release for it is certified by the officer or agency directing its removal. The expense for the removal and storage must be paid by the owner or driver of the vehicle. (In effect before 7/28/59; am 12/15/61, Reg. 3; am 8/10/66,

Reg. 22; am 12/31/69, Reg. 31; am 6/28/79, Reg. 70)

Authority: AS 28.05.011

13 AAC 02.350. CUSTODY OF VEHICLE WHEN OPERATOR IS ARRESTED. Repealed 6/28/79.

13 AAC 02.355. OTHER REMOVAL OF VEHICLES. Repealed 6/28/79.

13 AAC 02.360. STOPPED, STANDING OR PARKING IN SPECIFIED PLACE. Repealed 6/28/79.

13 AAC 02.365. ADDITIONAL PARKING REGULATIONS. (a) Except when otherwise provided by municipal ordinance, every vehicle stopped or parked upon a roadway must be stopped or parked parallel to the curb or edge of the roadway in the direction of authorized traffic movement, with its wheels on the side of the vehicle facing the nearest curb or edge of the roadway within 12 inches of that curb or edge of roadway.

(b) Repealed 6/28/79.

(c) Repealed 6/28/79.

(d) No person may obstruct or block traffic on a roadway, except as specifically allowed by statutes, regulations or ordinances.

(e) In the event a highway includes two or more separate roadways and traffic is restricted to one direction upon the roadway, no person may stand or park a vehicle upon the left-hand side of the one-way roadway unless posted signs permit standing or parking in that location.

(f) No person may park a vehicle upon a street, roadway, alley, or vehicular way or area, for the purpose of

(1) washing of the vehicle if the person parking the vehicle is a dealer, or agent or employee of a garage, filling station, or car wash;

(2) repairing, or performing maintenance work on the vehicle, except repairs or maintenance necessitated by an emergency;

(3) displaying the vehicle for sale or hire in

Public Facilities or a municipality, in their respective jurisdictions, may establish and regulate parking meter zones on the streets or vehicular areas where it is determined on the basis of an engineering and traffic investigation that the installation of parking meters is necessary to regulate parking. Parking meters may be operated during the hours specified on any day except Sundays and legal holidays.

(b) Parking meters may be erected in parking meter zones immediately adjacent to each designated parking space. The meters must be capable of being operated, either automatically or mechanically, upon the deposit of a United States coin or other approved token. Each parking meter must be designed so that upon the expiration of the time period registered by the deposit of the coin or token, it will indicate that the parking meter period has expired, and prior to the expiration will indicate the interval of time which remains. Each parking meter must indicate the days and hours when the requirement to deposit coins applies, the value of the coins to be deposited, and the period of time for which parking is lawfully permitted in the parking meter zone in which the meter is located.

(c) No person may park a vehicle in a designated parking meter space during the restricted or regulated time of the parking meter so that the vehicle occupies more than one designated space or protrudes beyond the markings designating the space, except that a vehicle which is too large to be parked within a single designated parking meter zone may occupy two adjoining parking meter spaces when coins or tokens are deposited in the parking meter for each space occupied.

(d) No person may park a vehicle in a parking space adjacent to a parking meter during the restricted and regulated time applicable to the parking meter unless coins or tokens as provided in (b) of this section are deposited, or have been previously deposited. A person may not permit a vehicle in his control to be parked in a parking meter space during the restricted and regulated time applicable to the parking meter while the parking meter for the space indicates by signal that the parking time in the space has expired. A person may not park a vehicle in a parking meter space for a consecutive period of time longer

than that limited period of time for which parking is permitted in the parking meter zone in which the meter is located, irrespective of the number of amounts of coins or tokens deposited in the meter.

(e) No person may deposit or attempt to deposit in a parking meter a slug, button or other device as a substitute for a coin or token required in (b) of this section.

(f) No person may deface, injure, tamper with, open, break, destroy or impair the usefulness of a parking meter. (Eff. 6/28/79, Reg. 70)

Authority: AS 28.05.011

ARTICLE 9. SPECIAL RULES FOR BICYCLES, NONMOTORIZED CONVEYANCES, MOTORCYCLES, AND MOTOR-DRIVEN CYCLES

Section

- 380. (Repealed)
- 385. Applicability of regulations to bicycles
- 390. (Repealed)
- 395. Riding on bicycles and certain nonmotorized conveyances
- 400. Riding bicycles on roadways and bicycle paths
- 405. (Repealed)
- 410. (Repealed)
- 420. Parking of bicycles
- 422. Applicability of regulations to motorcycles
- 425. Riding on motorcycles and motor-driven cycles
- 427. Driving motorcycles and motor-driven cycles on roadways laned for traffic

13 AAC 02.380. PARENTAL RESPONSIBILITY. Repealed 6/28/79.

13 AAC 02.385. APPLICABILITY OF REGULATIONS TO BICYCLES. (a) Every person operating a bicycle upon a roadway has all the rights and is subject to all of the duties applicable to the driver of any other vehicle as set out in this chapter, in addition to special regulations in secs. 385-420 of this chapter, except as to those provisions of this chapter which by their nature have no application.

(b) No person may violate the provisions of ss. 385-420 of this chapter. The parent or guardian of a child may not authorize or knowingly permit a child to violate a provision of this chapter.

(c) When signs are erected indicating that no right, left or U-turn is permitted, no person operating a bicycle may disobey the direction of the sign unless first pulling to the extreme right or shoulder of the road, dismounting and making the turn as a pedestrian. (In effect before 7/28/59; am 12/15/61, Reg. 3; am 8/10/66, Reg. 22; am 12/31/69, Reg. 31; am 6/28/79, Reg. 70)

Authority: AS 28.05.011

13 AAC 02.390. TRAFFIC LAWS AND REGULATIONS APPLY TO PERSON RIDING BICYCLE. Repealed 6/28/79.

13 AAC 02.395. RIDING ON BICYCLES AND CERTAIN NONMOTORIZED CONVEYANCES. (a) Repealed 6/28/79.

(b) No person operating a bicycle upon a highway may carry a person other than the operator, unless the bicycle is equipped with a seat for the passenger, except that an adult rider may carry a child securely attached to his person in a backpack or sling.

(c) No person operating a bicycle or other nonmotorized conveyance may attach, hold on by hand or otherwise secure the bicycle or conveyance or himself to another vehicle so as to be towed or pulled.

(d) A person operating a bicycle upon a highway shall maintain control of the bicycle and shall at all times keep at least one hand upon the handlebars of the bicycle.

(e) No person may operate a unicycle, coaster, roller skates, or a similar device on a roadway.

(f) This section does not apply upon a roadway closed to motorized vehicle traffic. (In effect before 7/28/59; am 12/15/61, Reg. 3; am 8/10/66, Reg. 22; am 12/31/69, Reg. 31; am 6/28/79, Reg. 70)

Authority: AS 28.05.011

13 AAC 02.400. RIDING BICYCLES ON ROADWAYS AND BICYCLE PATHS. (a) A person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, and shall give way to the right as far as practicable to a motor vehicle proceeding in the same direction when the driver of the motor vehicle gives audible signal.

(b) Persons riding bicycles on a roadway may not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles. Persons riding bicycles two abreast may not impede traffic and, in a laned roadway, shall ride within the farthest right lane.

(c) When a shoulder of the highway is maintained in good condition, an operator of a bicycle shall use the shoulder of the roadway.

(d) A person operating a bicycle on a trail, path, sidewalk, or sidewalk area shall

(1) exercise care to avoid colliding with other persons or vehicles;

(2) give an audible signal before overtaking and passing a pedestrian; and

(3) yield the right-of-way to any pedestrian.

(e) Repealed 6/28/79.

(f) A person riding a bicycle intending to turn left shall, unless he dismounts and crosses as a pedestrian, comply with the provisions of sec. 200 of this chapter. The operator of a bicycle must give a signal by hand and arm continuously during the last 100 feet traveled unless the hand is needed in the control or operation of the bicycle. When stopped to await an opportunity to turn, a hand and arm signal must be given continuously by the operator.

(g) No person may ride a bicycle upon a sidewalk in a business district or where prohibited by an official traffic-control device.

(h) No bicycle race may be conducted upon a roadway, except as provided under AS 05.35. (In effect before 7/28/59; am 12/15/61, Reg. 3; am 8/10/66, Reg. 22; am 12/31/69, Reg. 31; am 6/28/79, Reg. 70)

Authority: AS 28.05.011

13 AAC 02.405. CARRYING ARTICLE.
Repealed 6/28/79.

13 AAC 02.410. LAMPS AND OTHER EQUIPMENT ON BICYCLE. Repealed 6/28/79.

13 AAC 02.420. PARKING OF BICYCLES.
(a) No person may park a bicycle on a street or sidewalk in a manner which obstructs pedestrian traffic or the parking and driving of motor vehicles.

(b) No person may secure a bicycle to any of the following publicly owned facilities:

- (1) fire hydrants;
- (2) police and fire callboxes;
- (3) electric traffic signal poles;
- (4) stanchions or poles located within bus zones or stands;
- (5) stanchions or poles located within 25 feet of an intersection; or
- (6) trees under 10 inches in diameter.

(c) A bicycle parked on a highway must comply with the provisions of this chapter regulating the parking of vehicles. (Eff. 6/28/79, Reg. 70)

Authority: AS 28.05.011

13 AAC 02.422. APPLICABILITY OF REGULATIONS TO MOTORCYCLES. A person driving a motorcycle, a motor-driven cycle, or a motorized bicycle has the rights and is subject to the duties applicable to the driver of a vehicle under this chapter, in addition to special provisions in secs. 422-427 of this chapter, except as to those provisions of this chapter which by their nature have no application. (Eff. 6/28/79, Reg. 70)

Authority: AS 28.05.011

13 AAC 02.425. RIDING ON MOTORCYCLES AND MOTOR-DRIVEN CYCLES. (a) A person driving a motorcycle or motor-driven cycle shall ride on the permanent seat attached to the motorcycle, astride the seat and facing forward.

(b) No person driving a motorcycle or motor-driven cycle may carry another person, nor may another person ride on a motorcycle or motor-driven cycle, unless the vehicle has a permanent seat designed to carry more than one person and is firmly attached to the vehicle. No passenger may ride in a position that will interfere with the driving or control of a motorcycle or motor-driven cycle or the view of the driver.

(c) A person driving a motorcycle or motor-driven cycle must keep both hands on the handlebars of the vehicle.

(d) No person riding a motorcycle or motor-driven cycle may attach himself or the vehicle to another vehicle on the roadway, except as necessitated by an emergency or as designed by the manufacturer of the motorcycle for the attachment of a sidecar or other vehicle. (Eff. 6/28/79, Reg. 70)

Authority: AS 28.05.011

13 AAC 02.427. DRIVING MOTORCYCLES AND MOTOR-DRIVEN CYCLES ON ROADWAYS LANED FOR TRAFFIC. (a) Motorcycles and motor-driven cycles may be driven upon a lane of a roadway, and no motor vehicle may be driven so as to deprive a motorcycle or motor-driven cycle of the full use of a lane. This provision does not apply to motorcycles or motor-driven cycles driven two abreast in a single lane by consent of both drivers; however, no motorcycles or motor-driven cycles may be driven more than two abreast in a single lane.

(b) No driver of a motorcycle or motor-driven cycle may overtake and pass another vehicle in the same lane occupied by the vehicle being overtaken. A driver of a motorcycle or motor-driven cycle may not drive between adjacent lanes or lines of traffic, or between adjacent lines or rows of vehicles.

(c) The provisions of this section do not apply to police officers in the performance of their official duties; however, this exception does not relieve the driver of a police vehicle from the duty to drive with regard for the safety of all persons. (Eff. 6/28/79, Reg. 70)

Authority: AS 28.05.011

ARTICLE 10.**SPECIAL RULES FOR SNOWMOBILES
AND OTHER OFF-HIGHWAY VEHICLES****Section**

- 430. Applicability of regulations;
parental responsibility
- 435. (Repealed)
- 440. (Repealed)
- 445. Riding on snowmobiles and other
off-highway vehicles
- 450. (Repealed)
- 455. Operation on highways and other
locations
- 460. (Repealed)
- 465. (Repealed)

13 AAC 02.430. APPLICABILITY OF REGULATIONS; PARENTAL RESPONSIBILITY. (a) No parent or guardian may authorize or knowingly permit a child to violate a provision of secs. 430-455 of this chapter.

(b) Every person operating a snowmobile or other off-highway vehicle upon a highway has the rights and is subject to the duties applicable to the driver of any other vehicle under this chapter, except as otherwise provided in secs. 430-455 of this chapter, and except as to those provisions of this chapter which by their nature have no application. (Eff. 12/31/69; Reg. 31; am 6/28/79, Reg. 70)

Authority: AS 28.05.011

13 AAC 02.435. APPLICATION OF SNOW VEHICLE PROVISIONS. Repealed 6/28/79.

13 AAC 02.440. TRAFFIC LAWS AND REGULATIONS APPLY TO OPERATION OF SNOW VEHICLE. Repealed 6/28/79.

13 AAC 02.445. RIDING ON SNOWMOBILES AND OTHER OFF-HIGHWAY VEHICLES. A person driving a snowmobile or other off-highway vehicle may ride only on a permanent seat attached to the vehicle; no snowmobile or other off-highway vehicle, when driven on a highway, may be used to carry persons other than the driver, unless the vehicle is designed and equipped with a seat for a passenger.

(b) Repealed 6/28/79.
(Eff. 12/31/69, Reg. 31; am 6/28/79, Reg. 70)
Authority: AS 28.05.011

13 AAC 02.450. TOWING OTHER PERSON.
Repealed 6/28/79.

13 AAC 02.455. OPERATION ON HIGHWAYS AND OTHER LOCATIONS. (a) A snowmobile or an off-highway vehicle may be driven on a roadway or shoulder of a highway only under the following circumstances:

(1) when crossing a highway as provided in (f) of this section, or when traversing a bridge or culvert on a highway, but then only by driving at the extreme right-hand edge of the bridge or culvert and only when the traverse can be completed with safety and without interfering with other traffic on the highway;

(2) when use of the highway by other motor vehicles is impossible because of snow or ice accumulation or other natural conditions or when the highway is posted or otherwise designated as being open to travel by off-highway vehicles;

(3) when highway driving is authorized by an authority having jurisdiction over the highway, but only in accordance with restrictions which may be imposed by that authority with regard to highway use; or

(4) when driven on the right-of-way of a highway which is not a controlled-access highway, outside the roadway or shoulder, and no closer than three feet from the nearest edge of the roadway; night driving may be only on the right-hand side of the highway and in the same direction as the highway motor vehicle traffic in the nearest lane of the roadway; no person may drive an off-highway vehicle within the area dividing the roadways of a divided highway, except to cross the highway as provided in (f) of this section.

(b) Repealed 6/28/79.

(c) Repealed 6/28/79.

(d) Repealed 6/28/79.

(e) Repealed 6/28/79.

(f) A snowmobile or an off-highway vehicle may make a direct crossing of a highway if

(1) the crossing is made approximately at a right angle to the highway and at a location where visibility along the highway in both directions is clear for a sufficient distance to assure safety, and the crossing can be completed safely and without interfering with other traffic on the highway; and

(2) the vehicle is brought to a complete stop before crossing the shoulder or roadway, and the driver yields the right-of-way to all traffic on the highway.

(g) No snowmobile or other off-highway vehicle may cross or travel on a sidewalk, a location intended for pedestrian or other nonmotorized traffic, an alley, or a vehicular way or area which is not open to snowmobile or off-highway vehicle operation, except as provided in (f) of this section. (Eff. 12/31/69, Reg. 31; am 7/23/70, Reg. 35; am 6/28/79, Reg. 70)

Authority: AS 28.05.011

13 AAC 02.460. LAMPS AND OTHER EQUIPMENT ON SNOW VEHICLE. Repealed 6/28/79.

13 AAC 02.465. SPEED RESTRICTIONS. Repealed 6/28/79.

ARTICLE 11. MISCELLANEOUS PROVISIONS

Section	
480.	Unattended motor vehicle
482.	Limited use of vehicular ways and areas
485.	Limitations on backing
487.	Driving on sidewalk
490.	(Repealed)
495.	Riding in and on vehicles and towed objects; boarding and alighting; obstructing of driver's view or driving mechanism
497.	Funerals and other processions; permits
500.	(Repealed)
505.	Animals on highways and other areas
510.	(Repealed)
515.	Coasting prohibited

517. Authorized and other emergency vehicles

520. Following authorized emergency vehicle; interference at scene of accident; crossing fire hose

525. (Repealed)

530. Littering, depositing materials, and dragging objects prohibited

532. Railroad trains not to block roadways

535. (Repealed)

540. (Repealed)

545. Drivers to exercise care

550. (Repealed)

13 AAC 02.480. UNATTENDED MOTOR VEHICLE. No person driving or in charge of a motor vehicle may permit it to stand unattended by an adult person without first stopping the engine, placing the transmission in gear or in park position, locking the ignition, removing the key from the ignition and, if there is not a reasonable possibility of freezing, setting the brake. When standing upon a grade, a driver shall turn the front wheels toward the curb or near edge of the highway in such a manner that if the unattended vehicle should roll from its standing position, the movement will be in the direction toward the curb or near edge of the highway and away from the roadway. (In effect before 7/28/59; am 12/15/61, Reg. 3; am 8/10/66, Reg. 22; am 12/31/69, Reg. 31; am 6/28/79, Reg. 70)

Authority: AS 28.05.011

13 AAC 02.482. LIMITED USE OF VEHICULAR WAYS AND AREAS. (a) No pedestrian, rider of a bicycle, or driver of a vehicle may travel on a vehicular way or area as defined in 13 AAC 40.010 when it is designated for use by a different mode of travel than that used by the pedestrian, rider of a bicycle, or driver of a vehicle.

(b) A driver of a nonmotorized vehicle traveling upon a vehicular way or area shall, regardless of whether an official traffic-control device is present, yield the right-of-way in the manner specified in sec 130(c) of this chapter to any traffic using a roadway, driveway, or vehicular way or area on which motor vehicle traffic is authorized. (Eff. 6/28/79, Reg. 70)

Authority: AS 28.05.011

Chapter 9.08FAILURE TO RETURN LIBRARY PROPERTY*Sections:

- 9.08.010 Failure to return library property.
 9.08.020 Penalty for violations.

9.08.010 Failure to return library property. No person shall wilfully detain any library material whatever, or any book, magazine, recording or pamphlet, for more than thirty days after notification, sent by mail or otherwise to the last known or registered place of residence of such person that the material is overdue. (Ord. 70-2, 1972: prior code §38.05.055).

9.08.020 Penalty for violations. Violation of this chapter constitutes a misdemeanor and is punishable by a fine up to three hundred dollars. (Ord. 70-2, 1972: prior code §38.05.070).

Chapter 9.12OFFENSES AGAINST PUBLIC PROPERTYSections:

- 9.12.010 Offense against public property--Penalty.

9.12.010 Offense against public property--Penalty. No person may enter upon, occupy or use any borough park or recreation facility in except in accordance with borough parks and recreation rules and regulations.

B. No person may move, deface, damage or destroy any park or recreation property.

C. No person may put or throw any kind of garbage, rubbish or material or other discarded objects in or on any borough park or recreation facility.

* For statutory provisions authorizing municipalities to exercise the powers necessary to provide libraries, see A.S. §29.48.030(a)(14).

See also Chapter 2.32 in this code, Library.

** For statutory provisions authorizing municipalities to exercise the powers necessary to provide recreation facilities, see A.S. §29.48.030(a)(15).

A person who willfully violates any provision of this chapter is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than five hundred dollars, or by imprisonment in jail for not more than thirty days or both. (Ord. 72-42, 1972; prior code §40.05.090)

Chapter 9.16

LIQUOR LICENSES*

Sections:

- 9.16.010 Cooperation with State Beverage Control Board.
- 9.16.020 Licensing procedure.
- 9.16.030 Hours of sale.

9.16.010 Cooperation with State Beverage Control Board. It is declared the policy of the Fairbanks North Star Borough to cooperate with and aid the Alcoholic Beverage Control Board for the state of Alaska in determining the fitness of applicants requesting a transfer, renewal or issuance of a new liquor license. (Ord. 71-19, 1971: prior code §47.05.011).

9.16.020 Licensing procedure. A. Upon receipt of notice from the Alcoholic Beverage Control Board for the state of Alaska of the board's receipt of an application or intent to approve the transfer, renewal or issuance of a new liquor license:

1. The borough mayor or his authorized agent shall investigate to determine if the borough has an interest which can be protected by protesting the approval of the application for transfer, renewal or issuance of a new liquor license by the state board; and

2. The borough clerk shall duly advertise and place the matter of the application upon the agenda for the next meeting of the borough assembly in order that citizens may express their desires as to whether or not the assembly should approve or protest the transfer, renewal or issuance of the liquor license.

B. If the borough mayor determines that an interest of the borough can be protected by protesting the granting of the application, he shall so inform the borough assembly.

C. The assembly, after public hearing, shall determine by resolution if a protest to the application is to be lodged

* For statutory provisions requiring a hearing when the local governing body protests the issuance of a liquor license which the Alaska Alcoholic Beverage Control Board intends to issue, see A.S. §04.10.270.

Title 12

STREETS AND SIDEWALKS

Chapters:

- 12.01 Protection of Public Roads and Areas
- 12.02 Traffic Regulations

Chapter 12.01

PROTECTION OF PUBLIC ROADS AND AREAS

Sections:

- 12.01.010 Purpose.
- 12.01.020 Encroachments prohibited.
- 12.01.030 Removal of encroachments.
- 12.01.040 Notice to remove encroachment.
- 12.01.050 Removal after noncompliance--Removal expense.
- 12.01.060 Applicability.
- 12.01.070 Definitions.

12.01.010 Purpose. It is the purpose of this chapter to provide for the protection of public roads and areas. Nothing in this chapter shall be construed to prohibit objects or activities which do not impair the proper public use of a public road or public area. By way of example, signs, mailboxes, plants, grass, etc., which are located within a public road right-of-way but which do not interfere with the proper use of the road, are not affected by this chapter. (Ord. 80-23 §2(part), 1980).

12.01.020 Encroachments prohibited. No person shall cause, create, maintain or expand an encroachment. (Ord. 80-23 §2(part), 1980).

12.01.030 Removal of encroachments. If an encroachment exists in, on, under or over a public road or area dedicated to public use, the borough may require that the encroachment be removed in the manner provided by this chapter at the expense of the owner or person in possession of the encroachment or the person causing or permitting the encroachment. The owner, occupant or person in possession of an encroachment, or any person causing or permitting an encroachment to exist shall, within thirty days after being given notice thereof,

remove the encroachment. If the borough engineer determines that the encroachment is creating a hazard, he may cause the immediate removal of the encroachment. (Ord. 80-23 §2 (part), 1989).

12.01.040 Notice to remove encroachment. Notice to remove an encroachment shall be given by posting a copy of the notice on or near the encroachment and by serving a copy of the notice on the owner, occupant or person in possession of the encroachment, or to the person causing or permitting the encroachment to exist. Service of the notice may be made by certified mail. If the owner, occupant or person in possession of the encroachment, or the person causing or permitting the encroachment is unknown or cannot reasonably be found, posting of the notice shall be deemed sufficient. The notice shall describe the encroachment as to character and location and shall specify the time for removal. (Ord. 80-23 §2(part), 1980).

12.01.050 Removal after noncompliance--Removal expense. After a failure of the owner or person described in Section 12.01.040 to comply with a notice demanding removal of an encroachment, the borough may remove, or cause to be removed, the encroachment, and the person shall pay the borough:

- A. All expenses of removal of the encroachment;
- B. All costs and expenses paid by the borough as a result of claims filed against the borough for damages due to the existence of the encroachment, if any;
- C. Costs and expenses of suit, and legal interest from date any expense was incurred. (Ord. 80-23 §2(part), 1980).

12.01.060 Applicability. The provisions of this chapter shall not apply if any of the below stated conditions exist:

- A. The public road or area is located within a city or military facility;
- B. The public road or area is part of the state-maintained highway system or the federal aid highway system;
- C. The encroachment consists of water, sewer, electrical, telephone, television cable or steam lines permanently located by a public utility in the course of operations authorized by that utility's certificate of public convenience and necessity. (Ord. 80-23 §2(part), 1980).

12.01.070 Definitions. For the purposes of this chapter:

A. "Encroachment" means a structure, object, operation or material placed in, on, under or over a public road or dedicated public area in such a manner as to impair, impede or obstruct proper use of the public road or area; or as will affect drainage patterns that will impair, impede or obstruct

proper use. Examples of possible encroachments are buildings, billboards, walls, fences, driveways, earthworks, culverts, pipe, poles, towers, gates or ditches placed so as to obstruct or impair proper use. "Encroachment" does not include minor temporary objects placed within the public road area, that are not within the traveled way and not obstructing the public use.

"Public Use" means land dedicated to public use for a purpose other than a private road or easement. It includes a highway, right-of-way, street, alley, bridge, wall, parking lot, or similar or related facility dedicated to public use. It does not include a private road or easement. (Ord. 80-23 §2(part), 1980).

Chapter 12.02

TRAFFIC REGULATIONS

Sections:

12.02.010 Stop signs.

12.02.020 Definitions.

12.02.010 Stop signs. Pursuant to A.S. 29.48.020 which provides that "a second class borough may, in the area outside cities....(3) regulate the licensing and operation of motor vehicles and operators," the assembly exercises its authority to place and recognize stop signs within an established borough service area. (Ord. 79-86 §2(part), 1979).

12.02.020 Definitions. (a) "Stop sign" is a traffic sign requiring a driver of a motorized vehicle to come to a complete stop before proceeding; and such signs and their erector shall correlate with and conform with the recommendations of the Manual on the Uniform Traffic Control Devices as adopted by the American Association of State Highway Officials. (Ord. 79-86 §2(part), 1979).

Chapter 16.01

PURPOSES AND OBJECTIVES

Sections:

- 16.01.010 Disposal of Patented Land
- 16.01.020 Lands Retained for Public Purposes
- 16.01.030 Land Management Responsibility of Borough

16.01.010 Disposal of Patented Land. It is the intent and goal of the borough to dispose, to the general public in fee simple, of the major portion of lands patented to the borough under the Municipal Selections Act (Ch. 180 SLA 1978). Such disposal should be completed over the next ten to twenty years, through annual land sales.

16.01.020 Lands retained for Public Purposes. The borough shall identify and retain ownership to those lands required for public uses in the future. The borough shall also identify and retain ownership to those lands that might pose a danger to public health and safety because of some geophysical hazard (i.e., earthquake, slumping, flooding, erosion, and such other hazards as may be deemed by the borough as dangerous to public health, safety and welfare).

16.01.030 Land Management Responsibility of Borough. The borough will continue to manage lands that are not disposed of by sale.

Chapter 16.03

SALE OF BOROUGH LANDS

Sections:

- 16.03.010 Borough Lands Which May Be Disposed Of By Sale
- 16.03.020 Appraisal
- 16.03.030 Sale--Procedure
- 16.03.040 Sale--Resolution
- 16.03.050 Sale--Public Notice
- 16.03.060 Conveyance
- 16.03.070 Unsold Land
- 16.03.080 Land Pricing Policy
- 16.03.090 Land Sales Financing
- 16.03.100 Land Purchase Limitations

16.03.010 Borough Lands Which may be Disposed of by Sale. Borough lands not retained pursuant to 16.01.020 may be disposed of: Provided, that the borough shall dispose of approved but not patented lands only with the consent of the state pursuant to A.S. 29.18.207(d) and full disclosure to purchaser.

Chapter 16.05

METHODS OF DISPOSAL

Sections:

- 16.05.010 Sale by Auction
- 16.05.020 Sale by Sealed Bid
- 16.05.030 Sale by Lottery
- 16.05.040 Over-the-Counter Sales
- 16.05.050 Downpayment at Time of Sale
- 16.05.060 Exchanges Authorized

16.05.010 Sale by Auction. The borough may dispose of borough lands by use of an outcry auction. The buyer shall be the highest qualified bidder.

16.05.020 Sale by Sealed Bid. The borough may dispose of borough lands by use of sealed bids. The buyer shall be the highest responsive bidder.

16.05.030 Sale by Lottery. In the interest of providing a fair and equitable method of disposal which affords all interested parties an equal chance in obtaining any particular parcel of property, at a predetermined price, the borough may dispose of borough lands by use of a lottery.

16.05.040 Over-the-Counter Sales. The borough may dispose of borough lands by use of over-the-counter sales. Over-the-counter sales may be used to dispose of lands that are first offered but not sold at auction or lottery and are available on a first-come, first-served basis at the borough real property division, provided however that prior to over-the-counter sales prices are re-assessed based on the results of the initial offering.

16.05.050 Downpayment at Time of Sale. Down payments, bonds or other deposits required by the resolution of sale will be retained by the borough if the successful purchaser fails to comply fully with the terms of the sale.

16.05.060 Exchanges Authorized. The borough assembly may, by ordinance, approve the exchange of land or interests in land when in the judgment of the assembly such an exchange would be advantageous to the borough. The assembly may authorize an exchange for less than equal value when it has determined that it is in the public interest to do so. If the assembly makes such a determination, it shall include in its ordinance a description of the compelling public interest served.

16.18.010 Easements Authorized. The borough assembly, may, by resolution, grant easements.

16.18.020 Definition of "Easement". An easement is defined as an interest in land owned by another that entitles its holder to a specific or limited use or enjoyment. Any use not authorized as a casual use, a temporary use, or a lease may be authorized as an easement.

16.18.030 State Cooperative Easement Agreement. The borough has entered into a cooperative agreement with the state which provides that prior to or as a part of any development or disposal of certain borough lands, the borough will designate and dedicate an easement or easements across these parcels as necessary to provide public access to adjacent public and private land. No development or conveyance of the borough land may take place until the easement or easements have been reviewed and approved by the director of the division of lands, Department of Natural Resources. If access to state or private lands is required prior to development or disposal of certain borough lands, the state in consultation with the borough may designate an access easement or easements across these parcels.

16.18.040 Fee Schedule. The borough shall establish a fee schedule for all easements. The schedule shall be adequate to cover the costs of easement granting and administration. Such fees may be waived for public agencies.

16.18.050 Access Easements. Access easements shall in most cases be granted by the borough for public purposes rather than private purposes. In those cases where a private easement is granted, the borough shall reserve the right to unilaterally amend the private easement to create a public easement when the appropriate circumstances exist.

- A. All borough public access easements shall be subject to the borough's subdivision ordinance and its requirements for survey, monumentation, platting and construction, except that those designated pursuant to the cooperative easement agreement may be exempted from the construction requirement. The survey and design requirements in the cooperative easement agreement with the state shall be enforced.
- B. Private access easements need not be platted, but should be surveyed. Only access easements dedicated to the public shall be platted.
- C. All costs associated with the survey, monumentation, or improvements shall be borne by the person or organization requesting the easement.

16.18.060 Public Utility Easements. Public utility easements shall not be exclusive. The borough shall retain the right to allow other compatible uses of the easement and the right to require other utility users to enter into maintenance agreements with the original easement holder.

- A. All costs associated with surveying and the fulfillment of other conditions shall be borne by the utility requesting the easement.
- B. Utility easements shall be granted for a specific length of time which bears a relation to the useful life of the

Chapter 17.20DESIGN REQUIREMENTSSections:

- 17.20.010 Subdivision design and principles of acceptability.
- 17.20.020 Special standards and restrictions.

17.20.010 Subdivision design and principles of acceptability. Subdivisions shall meet the following design standards. Attention shall be given to specific requirements for parks, playgrounds, school sites, public building sites, major streets, the adequacy of street connection and the suitability of the land for development.

A. Large Lots. If a tract is subdivided into larger parcels than ordinary building lots, such parcels shall be arranged to allow the opening of future streets and logical further subdivision.

B. Reserved Strips. There shall be no reserve strips controlling access to land dedicated or intended to be dedicated to public use, except when the control and disposition of land comprising such strips are placed within the jurisdiction of the public under conditions specified by the commission and attached to the final plat.

C. Street System. The street system shall be devised for the most advantageous development of the entire neighborhood area. Principal streets in adjoining subdivisions shall be continued and shall be of at least minimum width as set forth in subsection N of this section. Offsets in street alignment should be avoided wherever possible. The street system shall provide for the future projection of the principal streets into adjoining unsubdivided lands.

D. Discouragement of Traffic. Nonarterial streets shall be so laid out that their use by through traffic will be discouraged.

E. Future Streets. Where the plat submitted covers only a part of the subdivider's tract, the commission may require a sketch of the prospective future street and utility system of the unsubmitted part.

F. Intersections. There shall be a minimum number of intersections of collector or minor streets with arterial streets.

G. Alleys. Alleys may be required by the commission in special instances.

H. Street Grades. Grades on arterial streets shall not exceed six percent. Grades on other streets shall not exceed ten percent. The commission may require spot elevations along the road centerline for determination of road grades provided. In rolling topography in which the grade of the streets exceed three percent, the subdivider should be required to indicate his proposed method of controlling the runoff to prevent erosion of the subdivision and the filling of the ditches of the State Highway or other roads on which the subdivision may abut.

I. Cul-de-sacs. Streets designed to have one end permanently closed shall be no longer than six hundred feet and shall be provided at the closed end with a suitable turnaround with a minimum radius of fifty feet to the property line. Temporary dead-end streets intended to provide access for future subdivision developments shall terminate in some type of temporary turnaround.

J. Partial Streets. Whenever there exists a dedicated or platted partial street or alley adjacent to the tract to be subdivided, the other part of the street or alley shall be platted or dedicated to comply with subsection N of this section.

K. Vertical Curves. All changes in street grades shall be connected by vertical curves of a minimum length equivalent to twenty times the algebraic difference in the grade percents for arterial and collector streets and one-half of this minimum for all other streets.

L. Alignment and Visibility. Clear visibility, measured along the centerline shall be provided for at least six hundred feet on the arterial streets, four hundred feet on the collector streets, and at least two hundred feet on all other streets.

M. Street Widths. The minimum right-of-way widths of proposed streets shall be as follows:

Primary arterial streets and highways	100 feet
Secondary arterial streets and highways	80 feet
Collector streets	60 feet
Minor streets	50 feet
Marginal access streets	40 feet
Cul-de-sacs	50 feet
Alleys	20 feet.

N. Curves. Where a deflection angle of more than ten degrees in the alignment of a street occurs, a curve of reasonable long radius shall be introduced. Reverse curves, where possible, shall be separated by a one hundred foot minimum length tangent. On streets sixty feet or more in width, the centerline radius of curvature shall be not less than three hundred feet; on the other streets not less than one hundred feet.

O. Street Intersections. Street intersections shall be as nearly at right angles as possible, and no intersection shall be at an angle of less than forty-five degrees without the approval of the commission.

P. Street Grades. Where grades of original ground along street centerlines exceed three percent, such grade shall be indicated upon subdivision plat. Flat grades are preferred from fifty to one hundred feet away from an intersection, but in no case shall grades exceed four percent for a distance of at least one hundred feet from all intersections.

Q. Street Names. Streets shall be named in such a manner as to conform to adjacent areas and particular attention shall be given to avoid duplication. The commission may require changes to avoid duplication and reserves the right to reject any names.

R. Block Layout. The length, width and shapes of blocks shall be determined with due regard to the special needs of the type of use contemplated; to needs for convenient access and circulation, to topography, and to the conservation of building sites.

S. Crosswalks. Pedestrian crosswalks not less than ten feet wide may be required in blocks longer than six hundred feet where deemed essential to provide reasonable circulation or access to schools, playgrounds, shopping centers, transportation or other community facilities.

T. Lots. The shape of lots and their orientation shall be appropriate to the location of the proposed subdivision and to type of development contemplated.

U. Lot Dimensions.

1. Minimum lot size shall comply with the Fairbanks North Star Borough zoning ordinance, subject to the modification of subsections U(2) and U(3) of this section.

2. Where community sewer and water facilities are not available and are not to be made available in the foreseeable future, lot sizes shall be a minimum of forty thousand square feet.

3. In those areas of the borough where there is evidence to indicate that a forty thousand square foot minimum lot size is insufficient to prevent hazards to health or property the platting board may require a larger minimum lot size or other more restrictive standards, or additional improvements as provided for in Section 17.20.020. Evidence to be considered in the platting board review includes but is not limited to:

a. Soil types, as shown by government maps, test borings;

b. Slope and contours, as shown by government surveys, site inspection, topographical maps; and/or

c. Ground conditions such as bedrock, permafrost and ground water levels as shown by on-site inspections.

V. Access to Street. Each lot shall abut on a dedicated street, with a minimum frontage of forty feet.

W. Side Lot Lines. Side lines of lots shall be approximately at right angles or radial to the street lines, except in those cases where topography or angle of slope requires a different configuration of the lots to facilitate lot accessibility.

X. Through Lots. Double frontage lots, other than corner lots, will be permitted only under unusual conditions.

Y. Lots on Arterial Streets. Where a new subdivision involves frontage on an arterial street, lots fronting on the arterial street must conform to one of the following requirements:

1. Marginal access streets must be provided.
2. A minor street along the rear of the lots must be provided to offer access to the lots.

Z. Public Spaces. Due consideration shall be given to the allocation of suitable areas for schools, parks, playgrounds, and other areas to be dedicated for public use or reserved for future acquisition by a public body.

AA. Natural Features. Outstanding natural and cultural features such as scenic spots, water courses and historic sites shall be reserved insofar as possible.

BB. Easements Along Streams. Whenever any stream, slough, or other important surface water course is located within or adjacent to a subdivision, the subdivider shall provide and dedicate easements along the stream in such width as is necessary for the purposes of widening, improving or protecting the stream and for sanitary or recreational uses.

CC. Easements for adequate surface water drainageways shall be provided. The proposed drainageway shall be subject to approval by the borough engineer.

DD. Utility Easements. Easements for public utilities to serve each lot in a subdivision shall be provided. With the exception that utilities may, unless otherwise noted or unless subsequently limited or regulated, be placed in any street, utility easements shall be designated on that plat and shall be sufficient to enable public utilities serving the subdivision to construct, operate and maintain appropriate facilities within the easements. Notes on the face of the plat may restrict the types of utilities allowed within specific easements and the manner in which construction and operation of those public utilities is allowed.

Prior to approval by the platting board of the plat, the subdivider shall show that public utilities authorized to serve the subdivision have been consulted with respect to their needs concerning the subdivision. If a public utility holds one or more nonspecific "blanket" easements

covering all or a portion of the land in the subdivision the subdivider shall submit an agreement from the public utility to convey by quitclaim deed its interest in the land. The quitclaim deed is to be delivered to the borough by the public utility and shall be recorded with the plat which provides for specific utility easements satisfactory to the utility executing the quitclaim deed.

EE. Multiple Use Easements. Coextensive easements dedicated or otherwise established pursuant to subsections BB, CC and DD shall be designed, developed and used in such a manner that the use of one type of easement does not inhibit or prevent the intended use of other easements which may be established in the same location, particularly with respect to utility easements. (Ord. 82-51, 1982; Ord. 82-11 §§3, 4 and 5, 1982; Ord. 79-7 §2, 1979; Ord. 72-7, 1972; Ord. 69-27, 1969: prior code §49.10.130).

17.20.020 Special standards and restrictions. A. In those areas where the planning commission has been presented with evidence to the effect that the preliminary layout, if approved and developed, would tend to result in a hazard to persons or property, or if evidence has been presented which tends to indicate that damage to properties lying beyond the boundaries of the proposed subdivision may occur, the planning commission may impose more restrictive standards than those already established in other sections of these regulations. In lieu of or in addition to imposition of more restrictive standards, the planning commission may also require as a condition of final approval the construction of certain kinds of improvements in addition to those required under Section 17.04.010 of this title. Once the commission has determined that more restrictive standards and/or additional improvements are required, they shall be constrained in requiring these more restrictive standards and/or additional improvements to the rule that the requirements must be reasonably related to the elimination of the potential damage, or hazard, as described in the evidence.

B. In all cases involving this section, the commission, in designing special standards or requiring additional improvements, shall seek recommendations for solutions by professional persons active in the appropriate field. In considering specific improvements the commission shall solicit cost estimates from the borough engineer.

C. For the purpose of this section the term "damage" shall only include the following:

1. Impairment of property as a result of changing the location of natural surface water drainage channels;
2. Impairment of natural sources as a result of permanent disturbance of those waters by means of development or disposal of wastes;

By: John A. Carlson
Introduced: 1/24/80
Postponed: 1/24/80
Substituted: 2/28/80
Amended: 2/28/80
Adopted: 2/28/80

RESOLUTION NO. 80-9

A RESOLUTION ESTABLISHING POLICY FOR CREATION AND
MANAGEMENT OF A RECREATION TRAIL SYSTEM
IN FAIRBANKS NORTH STAR BOROUGH

WHEREAS, it is in the best public interest to establish and manage
a system of recreation trails within the Fairbanks North Star Borough; and

WHEREAS, changing land ownership is reducing opportunities for
establishing and maintaining a recreation trail system at reasonable costs; and

WHEREAS, portions of the existing trail network are being lost for
lack of a clear policy and an aggressive acquisition program; and

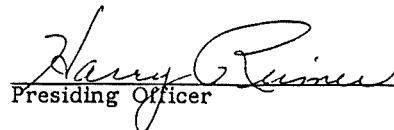
WHEREAS, the Fairbanks North Star Borough Assembly has adopted
a 5 year trail plan as an element of the Comprehensive Plan:

NOW, THEREFORE, BE IT RESOLVED by the Assembly of the
Fairbanks North Star Borough that a Comprehensive Trail Plan shall be actively
implemented within the limits of available funds and man power; and


BE IT FURTHER RESOLVED that a Trail Commission be established
by ordinance to replace the duties of the Parks & Recreation Commission in
the matters of trails;

BE IT FURTHER RESOLVED that the attached policy statement is
adopted as the official policy of the Fairbanks North Star Borough to guide
the establishment and management of the recreation trail system.

PASSED AND APPROVED THIS 28th DAY OF FEBRUARY, 1980.


Presiding Officer

ATTEST:


Clerk of the Assembly

FAIRBANKS NORTH STAR BOROUGH POLICY ON RECREATION TRAILS

It is the intent of the Fairbanks North Star Borough Assembly to establish a recreation trail system within the Fairbanks North Star Borough which shall be managed for perpetual public use. This trail system shall be acquired and managed within the following policy guidelines:

1. Limitations

- a. The borough shall acquire right-of-way easements only and not develop or maintain recreational trails.
- b. Easement acquisition funds shall be limited to sources other than property tax and sales tax revenues, unless a service area has been established for this specific purpose.
- c. The borough shall do nothing to incur liability associated with trails by developing and maintaining rights-of-way or engaging in any other activity likely to incur liability to the borough.
- d. Eminent Domain powers shall not be utilized for acquisition of recreational trail easements. The exception to this rule shall be those cases of "friendly" condemnation necessary to clear title or establish value on a willing grant of easement.

2. Easement Policy

- a. Perpetual easement rights shall be acquired in the name of the public through dedication, easements by purchase or donation, right-of-way permits, or by cooperative agreements.
- b. Trail easements will normally be 20 feet in width unless adequate justification is given for a different width.
- c. Easements granting public use only during certain portions of the year and for particular uses are acceptable for particular trail requirements.
- d. At the time of initial acquisition, trail alignment shall be adjusted, if necessary, and in so far as possible to coincide with property boundaries and utility easements in order to maintain property use and development rights with the provision that the trail's utility is maintained.

- e. Priorities for acquisition of trail easement shall be set by the Fairbanks North Star Borough Assembly in December of each year after public hearing and Planning Commission recommendations. Priorities shall be guided by, but not limited to, the following considerations: intensity of public use on the trail, multiplicity of use on the trail, utility of the trail for point to point access, and land tenure.

3. Comprehensive Trail Plan

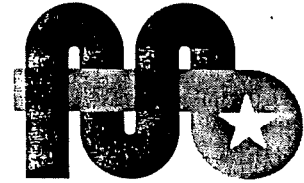
- a. The Comprehensive Trail Plan shall consist of three parts. 1) Part I shall include all nominations for eventual addition to the trail system which have been approved by the Trails Commission, concurred upon by the Planning Commission and adopted by the Assembly. 2) Part II shall include all trails for which an easement has been acquired. 3) Part III shall include all parts of the trail system having legal public access reserved by means of easement, on-site survey and recorded plat. The borough can guarantee legal public access only to those trails in part III of the Comprehensive Trail Plan.
- b. The Planning Department shall maintain the official trail records which shall consist of, but not be limited to: 1) a map of all trails proposed for inclusion in the trail plan. 2) easement documents which have been obtained for trail right-of-ways. 3) survey records, plats and legal descriptions for those rights-of-way reserved by those means.
- c. All perpetual rights acquired shall be recorded. For trails in Part II of the Comprehensive Trail Plan, the recorded material may consist of written documents describing easements. For trails in Part III of the Comprehensive Trail Plan, the recorded material shall consist of the conveying document and a plat based on an on-site survey. Trails located along property boundaries, section lines and utility easements, shall be deemed surveyed so long as a plat can be prepared and the easement can be retraced on the ground.

4. Trail Nominations

- a. The Borough Trail Commission, acting in conjunction with interested public groups, as identified by the Borough Assembly, shall be recognized as a clearing house for trail nominations to the Comprehensive Trail Plan.
- b. All federal, state, borough, and private, subdivisions and waivers of subdivisions presented to the Planning Commission for review and approval shall be assessed for trail system needs. Voluntary easements will be encouraged for the public good, but failure to grant such easements shall not prejudice the developers' right for approval.

fairbanks north star borough

p.o. box 1267 520 fifth ave. fairbanks, alaska 99707 907-452-4761



M E M O R A N D U M

TO: Randy R. Rogers, Trails Planner
THRU: Scott A. Burgess, Director
Department of Community Planning and Development
FROM: Michael B. Markham, Assistant Borough Attorney *MBM*
SUBJECT: Comprehensive Trail Plan, Legal Issues
DATE: September 21, 1983

Your memo of August 25, 1983, poses various questions concerning the Comprehensive Trail Plan which I will attempt to answer generally in the order in which they were asked.

- I. What level of care is necessary to avoid or minimize liability on the part of the Borough for negligent or inadequate maintenance of the trails?

Because the Borough's liability is predicated on negligence, McQuillin, Municipal Corporations §54.12, the question becomes one of how the borough can adequately fulfill its obligation to the public to keep the trails in a reasonably safe condition. Basically, the Borough's duty is only to exercise ordinary care to keep the trails reasonably safe for persons using them in the exercise of ordinary care themselves. McQuillin, §54.11. Although "reasonable care" is probably not as exact a standard as could be desired, the law does indicate that persons using the trails would be bound to the use of ordinary care themselves while on the trails.

For instance, if a certain trail posed obstacles or hazards which could not be easily negotiated by an inexperienced skier, either a warning of a particular obstacle or hazard or a designation of the trail as being appropriate only for either intermediate or experienced skiers would place users on notice as to what the requisite degree of reasonable care would be on that particular trail. If the trail, without such warnings, were suitable for general use by skiers, the Borough could expect that each user would use reasonable care to avoid injury and consequent liability on the part of the Borough.

Ordinary care on the part of the Borough includes the exercise of reasonable care to guard against dangers which can ordinarily be anticipated, McQuillin, §54.15. This

obligation includes "the anticipation of defects which are the natural or ordinary result of use or climatic conditions. A failure of the (Borough) to make sufficiently frequent examination may render it liable," McQuillin, §54.16. This implies that, once the trails are established, the Borough will have the affirmative duty to inspect and maintain these trails to prevent injury to users from normally occurring hazards.

II. What is the effect on liability of the Borough or private land owners when trails are reserved by the easements versus public dedications?

Because liability arises when the municipality invites the public onto land to use the land under color of authorization by the municipality, it makes no difference whether the trails are reserved by easements or public dedications. McQuillin, §54.25. "The mode in which the (trail) was established is immaterial even if it was illegal." McQuillin, §54.25(b).

III. How can the Borough regulate use of the trails by motorized vehicles, especially when such vehicles are not forbidden by the easements themselves?

Although AS 29.48.035(a) does allow municipalities to regulate their public facilities and services, AS 29.48.035(b) provides that second class boroughs may only exercise these powers subsequent to their express assumption. However, AS 29.48.020(4) expressly confers upon a second-class borough the power to regulate snow vehicles. Because this type of traffic would be controlled by regulatory power, rather than deed restrictions or easements, it would not be necessary to alter the existing plats.

IV. Does the Borough's encroachment ordinance apply to dedicated property, or can it apply also to certain easements?

FNSB 12.01.020 prohibits encroachments on facilities dedicated to public use. This is not meant to imply that this requires a dedication by deed; this is meant to indicate that the facilities must be for the public use. For example, the Musk Ox Subdivision easements are not dedications in the sense that the Borough now owns the area's designated in fee simple. However, they are impliedly dedicated to the public use and, as such, within the purview of the ordinance.

V. Is making a land status check adequate precaution before exercising the existing R.S. 2477 right-of-way for Chena Hot Springs winter trail?

We believe this would be adequate in order to determine the

Randy Rogers
September 21, 1983
Page 3

validity of the R.S. 2477, and engaging in the subsequent survey.

I believe this addresses and clarifies the matters referenced in your memorandum. If any of these questions need further clarification, please let me know.

MBM:mlo

APPENDIX B - LEGAL DEFINITIONS

- dedication - The setting aside of land for a public use, in other words, the intentional appropriation or donation of land, or of an easement or interest therein, by its owner for some proper public use.
- easement - A servitude imposed as a burden on land. The right which one person has to use the land of another for a specific purpose not inconsistent with a general property in the owner and not including the right to participate in the profits of the soil charged with it. Precisely, a liberty, privilege, or advantage in land without profit, existing distinct from the ownership of the soil.
- fee simple - The largest estate in land known to the law and implying absolute dominion over the land; an estate of inheritance clear of any condition, limitation, or restriction, to particular heirs.
- right-of-way - A right of passage, an easement. The right of one person, of several persons, or of the community at large, to pass over the land of another.